

EXHIBIT 77

NO. D-1-GV-04-001286

THE STATE OF TEXAS)	IN THE DISTRICT COURT
)	
ex rel.)	
VEN-A-CARE OF THE)	
FLORIDA KEYS, INC.,)	
Plaintiffs,)	
)	
VS.)	TRAVIS COUNTY, TEXAS
)	
ABBOTT LABORATORIES INC.,)	
ABBOTT LABORATORIES,)	
HOSPIRA, INC., and B. BRAUN)	
MEDICAL INC.,)	
Defendant(s).)	201ST JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF
CRAIG DOTSON SMITH
January 11, 2007

ORAL AND VIDEOTAPED DEPOSITION OF CRAIG DOTSON
SMITH, produced as a witness at the instance of the
Plaintiff(s), and duly sworn, was taken in the
above-styled and numbered cause on the 11th of
January, 2007, from 9:10 a.m. to 5:15 p.m., before
CYNTHIA VOHLKEN, CSR in and for the State of Texas,
reported by machine shorthand, at the offices of Jones
Day, 717 Texas, Suite 3300, Houston, Texas, pursuant
to the Texas Rules of Civil Procedure and the
provisions attached previously.

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

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<p style="text-align: right;">Page 42</p> <p>1 you from context. I mean, if I did, it would be, 2 "This is what we talked about. I'm putting it in 3 writing so there is no misunderstanding because if you 4 do this again, understand what your consequences will 5 be." That would be the only time I would put 6 something like that in writing down because there is 7 not going to be any discussion if this happens again. 8 MR. BERLIN: Remember, he's asking you 9 whether you recall something as opposed -- 10 THE WITNESS: Right. I mean -- 11 MR. BERLIN: And let me just -- let me 12 just interject here. We probably have a duty to 13 protect this sort of information on an employer/ 14 former employee, so we'll mark this portion 15 confidential. Given how the deposition has proceeded, 16 I would be surprised if we didn't end up marking the 17 transcript -- 18 MR. WINTER: Sure. 19 MR. BERLIN: -- confidential, highly 20 confidential, but I just wanted to note that at that 21 point. 22 MR. WINTER: Very good. 23 A. What I'm trying to do, sir, is be honest with 24 you and make sure we are clear on your question. 25 Sometimes the question is so broad and the time frame</p>	<p style="text-align: right;">Page 44</p> <p>1 where you thought that Mr. Lotz used an inappropriate 2 sales technique? I'm not asking you if you counseled 3 him for it, but I'm asking you if you recall any time 4 where you thought he was doing something he shouldn't 5 be doing in the selling of Abbott's drugs. 6 MR. BERLIN: Objection, form. 7 A. I don't recall that. 8 Q. (BY MR. WINTER) When you were a district 9 manager, and let's -- let's narrow the time frame 10 here, from, say, 1993 -- January 1st, '93 through the 11 time period that you left being a district manager to 12 become a national account manager, during that window, 13 January 1, '93 to 1998, did you have knowledge of the 14 requirements for a drug company to have its products 15 eligible for reimbursement by Medicaid? 16 A. Say that again. 17 Q. Rather than me trying to recite it, I'm going 18 to ask her to read it back. 19 (Requested portion was read) 20 A. No. 21 Q. (BY MR. WINTER) So is it your testimony that 22 at no time -- strike that. Let me ask this question. 23 Prior to 1993 did you have any knowledge 24 of the requirements for a drug company to have its 25 products eligible for reimbursement by Medicaid?</p>
<p style="text-align: right;">Page 43</p> <p>1 is so thick, I'm doing the best I can to let you 2 understand how and why. 3 Q. (BY MR. WINTER) I understand that and I'll 4 do -- try and do a better job of narrowing my 5 question. Let's start with narrowing the time frame. 6 Mr. Lotz reported to you from approximately 1994, if I 7 recall correctly, until the time that you left to 8 become a national account manager; is that true? 9 A. That's a fair timeline. 10 Q. Roughly '94 to sometime in early 1998, I 11 believe? 12 A. I'm not sure of his hire date, but he was 13 there when I left. 14 Q. Okay. And did you hire him into his 15 position? 16 A. Yes. 17 Q. Okay. Did you ever counsel Mr. Lotz because 18 he used an inappropriate sales technique, not because 19 he -- and I want to make sure I'm clear now. Not 20 because he was rude or made an inappropriate comment 21 or insinuation to a customer, but because he used an 22 inappropriate sales technique? 23 MR. BERLIN: Objection, form. 24 A. I don't recall that I did that. 25 Q. (BY MR. WINTER) Do you recall any occasion</p>	<p style="text-align: right;">Page 45</p> <p>1 A. '93? Not to my knowledge. 2 Q. As you sit here today do you have an 3 understanding as to how a drug manufacturer -- how a 4 drug manufacturer becomes eligible to have its 5 products reimbursed by Medicaid? 6 A. I'm not real clear on that. 7 Q. Do you have a vague understanding? 8 A. Vague is probably a fair comment. 9 Q. What is your vague understanding of how a 10 drug company has its products eligible for 11 reimbursement? 12 MR. BERLIN: You're still referring to 13 Medicaid reimbursement? 14 MR. WINTER: Yes, I am. I'm sorry. 15 Medicaid reimbursement. 16 A. There -- there's got to be a policy that 17 states have a formulary of some sort, products are 18 presented to that state by a manufacturer to ask if 19 they want to put those products on their state 20 formulary that would be reimbursed by Medicare, 21 et cetera. Who does that? I don't know. 22 Q. (BY MR. WINTER) Do you understand that drug 23 manufacturers, such as Abbott and Hospira, voluntarily 24 choose to participate in the Medicaid program or do 25 you believe it to be mandatory?</p>

12 (Pages 42 to 45)

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<p style="text-align: right;">Page 46</p> <p>1 A. I don't know.</p> <p>2 Q. You don't know one way or the other?</p> <p>3 A. (Shakes head negatively).</p> <p>4 Q. During the time period that you were a</p> <p>5 district manager did you have an understanding that</p> <p>6 Medicaid and Medicare reimbursement was important to</p> <p>7 your customers or the customers that your subordinates</p> <p>8 called on?</p> <p>9 A. Not from a knowledge basis I didn't really</p> <p>10 understand that. I mean, I knew that</p> <p>11 Medicare/Medicaid was like an insurance company, no</p> <p>12 different than a private pay insurance company, but</p> <p>13 no. I mean, I really didn't understand that.</p> <p>14 Q. When you say you didn't understand that --</p> <p>15 A. Uh-huh.</p> <p>16 Q. -- it sounded to me like you had an emphasis</p> <p>17 on the word "that." Can you explain what you meant?</p> <p>18 MR. BERLIN: Objection, form.</p> <p>19 A. That would be -- "that" would be referring to</p> <p>20 your question did I understand how the -- you know, is</p> <p>21 it voluntary, involuntary, or whatever the question</p> <p>22 was. No. I mean, what I'm saying is I'm not sure if</p> <p>23 it is voluntary, if it's not. I don't really know.</p> <p>24 As a DM and even as a national account manager that's</p> <p>25 not my responsibility.</p>	<p style="text-align: right;">Page 48</p> <p>1 formularies and the question is why. So, yeah. I</p> <p>2 mean, to answer that question, yeah, that did come up.</p> <p>3 Q. Do you recall which sales reps that came up</p> <p>4 with?</p> <p>5 A. Well, I know -- I know that there -- and this</p> <p>6 goes back to my -- West Virginia, was shown a document</p> <p>7 that said the products were not on the State of Texas</p> <p>8 formulary and I wrote a letter asking why not.</p> <p>9 Q. You wrote a letter to whom?</p> <p>10 A. To Abbott.</p> <p>11 Q. To Abbott?</p> <p>12 A. Uh-huh.</p> <p>13 Q. To who at Abbott?</p> <p>14 A. Whoever was in charge of doing that, I guess.</p> <p>15 I don't know. I don't really remember who, but the</p> <p>16 point was we were told products were not reimbursable.</p> <p>17 Why? Don't know. Are they on a formulary, not on</p> <p>18 formulary. Then you call and ask. "How come they're</p> <p>19 not on formulary?" Either they are or they aren't.</p> <p>20 If they're not, then you know what, we're done. If</p> <p>21 they are, then why aren't they being paid for, I</p> <p>22 guess.</p> <p>23 Q. When you say, "We were told," is that</p> <p>24 information that was conveyed to you by your sales</p> <p>25 representative or is that information that you</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. (BY MR. WINTER) Okay. Let me ask you this</p> <p>2 question: Did you have an awareness at any time when</p> <p>3 you were a district manager that Medicaid or Medicare</p> <p>4 reimbursement was important to your customers?</p> <p>5 A. Hard question. Don't really remember that.</p> <p>6 MR. BERLIN: Actually, can I have the</p> <p>7 question read back? I'm sorry.</p> <p>8 (Requested portion was read)</p> <p>9 A. That's a hard question. What I will tell you</p> <p>10 is when you did talk to them, your customers, they</p> <p>11 were not taking many Medicare patients. Now, what</p> <p>12 does that tell you? Good question. Don't know.</p> <p>13 Assuming that they're not a good source of income, I</p> <p>14 would think. Speculation, business.</p> <p>15 Q. (BY MR. WINTER) Well, did you ever have an</p> <p>16 occasion where any of your subordinates, your field</p> <p>17 sales representatives, raised with you a concern that</p> <p>18 a customer was not willing to purchase Abbott's</p> <p>19 products because those products weren't reimbursable</p> <p>20 by Medicaid?</p> <p>21 A. I'm sure.</p> <p>22 Q. Do you recall any specific instances where</p> <p>23 that happened?</p> <p>24 A. Well, I know that there's -- there was</p> <p>25 opportunity that certain products were not on certain</p>	<p style="text-align: right;">Page 49</p> <p>1 personally obtained from some other source?</p> <p>2 A. No. That's what I was told.</p> <p>3 Q. By the sales rep who was elevating the</p> <p>4 complaint to you?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Did you ever become aware of the unique</p> <p>7 requirements for participation in the Texas Medicaid</p> <p>8 program that drug manufacturers must report their</p> <p>9 prices to the State of Texas Medicaid program? Did</p> <p>10 you ever know about that?</p> <p>11 A. No. That's not -- that's not in my scope.</p> <p>12 Q. That was -- that's not in your scope now?</p> <p>13 A. Now is 2007?</p> <p>14 Q. Yes, sir.</p> <p>15 A. Do I understand more about how things work?</p> <p>16 It's a good question.</p> <p>17 Q. Well, let me -- let me narrow my question to</p> <p>18 the time period that you were a district manager.</p> <p>19 Were you ever aware at any time while you were a</p> <p>20 district manager that Texas Medicaid requires</p> <p>21 manufacturers to report their pricing to the Texas</p> <p>22 Medicaid program in order for a drug to get on the</p> <p>23 Texas formulary?</p> <p>24 A. No.</p> <p>25 Q. Did you become aware of that fact at some</p>

13 (Pages 46 to 49)

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<p style="text-align: right;">Page 50</p> <p>1 point in time subsequent to you leaving the office of 2 district manager? 3 A. Not for Texas. 4 Q. Did you become aware of that fact for some 5 other state? 6 A. I became aware of that fact for a drug that 7 was not on a formulary in New York and we asked why 8 and at that point I was somewhat informed that, you 9 know, this is the process you have to go through to 10 get a drug on. 11 Now, I don't know all the data that's 12 required to get a drug on, but it's just not automatic 13 that a drug comes on. And so there was one drug that 14 was not being reimbursed that a lot of people were 15 buying in the state of New York, then they were 16 able -- New York goes, "Oh, we made a mistake. We 17 need to add that drug." That oop was added, no more 18 issue. 19 Q. What is your understanding of what was 20 entailed in that process of adding the drug in New 21 York? 22 A. Don't really know. Speculation says they 23 sent data -- 24 MR. BERLIN: Well, he's not asking you 25 for your speculation. I didn't mean to interrupt.</p>	<p style="text-align: right;">Page 52</p> <p>1 I'm the DM. The rep brings the issue to me. I call 2 corporate and go, "Here's the issue. Who do I need to 3 talk to? Is it, isn't. Thank you. We'll take care 4 of it. Done. Next." Then you hear, A, you know, the 5 products were added. It was a mistake. They agreed 6 they needed to put them on the formulary. Everything 7 is fine. That's the way it works. 8 Q. I asked you earlier if you knew at any time 9 when you were a district manager that Medicaid or 10 Medicare reimbursement was important to your customers 11 and I think ultimately after we read the question back 12 a few times your answer was, "No, I was not aware of 13 that"? 14 A. Pretty much. I mean, it's hard to say. I 15 mean, is it or is it not? I mean, as a district 16 manager you don't get involved in that. That's not 17 my -- I don't get involved in the way they get paid or 18 what happens with them on that side. I look at -- I 19 look at here is what we have to offer you. Can it 20 help you do your business, yes or no? If it can, then 21 we can move forward; if it can't, thank you very much. 22 It's pretty simple. 23 MR. BERLIN: Ray, excuse me. Can we 24 take a break when it's a convenient time for you? 25 MR. WINTER: Sure. I'm pretty close to</p>
<p style="text-align: right;">Page 51</p> <p>1 MR. WINTER: Okay 2 MR. BERLIN: You can ask the question, 3 but -- 4 Q. (BY MR. WINTER) Mr. Berlin is correct. I'm 5 not asking you to speculate. I'm asking you what your 6 understanding was. 7 A. Well, I don't know. 8 Q. You just have an understanding that somehow 9 the drug got added? 10 A. Yes. The drug gets added. I mean, 11 there's -- in the corporate world there are gates. 12 Q. Gates? 13 A. Gates. I'm a -- I'm a -- I'm a district 14 manager. I'm a lieutenant. I take orders, I 15 implement. I don't make decisions. I'm not in the 16 idea of understanding how stuff is done. It's not in 17 my best interest. I don't care. You tell me it's not 18 on, fine. Guess what, we don't sell it. Is it on? 19 Good. We sell it. Next. 20 Q. So you understood that if it was going to get 21 on, it would be taken care of by somebody up at 22 headquarters at Abbott Park? 23 A. Yeah. I mean, your point, was told this 24 isn't on a list. Can it be added or can it not be 25 added? You have customers going -- you have an issue.</p>	<p style="text-align: right;">Page 53</p> <p>1 being ready. Do you need to go right this minute or 2 could we -- 3 MR. BERLIN: I can wait a minute. 4 MR. WINTER: Okay. Good. 5 Q. (BY MR. WINTER) I asked -- I was prefacing 6 my next question, which is: As a national account 7 manager was there a time when you became aware, more 8 so than you had ever been as a district manager, that 9 Medicaid reimbursement was important to those national 10 accounts that you call on? 11 A. I can't say that Medicaid reimbursement. 12 Q. Okay. Well, let's use third-party 13 governmental reimbursement. 14 A. Same thing. I think the customers get paid 15 is important. For them to get paid by an independent 16 insurance company, or however they're getting paid, I 17 think that is important and definitely, you know, as a 18 national account manager you have run into that as far 19 as, you know, conversations. 20 Q. Do you understand what the acronym "AWP" 21 means? 22 A. Uh-huh. 23 Q. What is your understanding of what that 24 acronym means? 25 A. Average wholesale price.</p>

14 (Pages 50 to 53)

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1 VHA, CAPS, Coram, Consorta, Broadlane, GeriMed,
 2 Chartwell, Option Care and PBI?
 3 A. Fair.
 4 Q. Any of the accounts that you've called on
 5 during that '98 to '07 time period that I didn't
 6 mention that you can recall?
 7 A. Company called Innovatix, I-n-n-o-v-i-t-x
 8 (sic). Innovatix was mine. Critical Care Systems. I
 9 had that for a while. That's pretty much all of them.
 10 Q. Okay. Are Innovatix -- is Innovatix still a
 11 going concern today?
 12 A. It is a -- it is a business, correct.
 13 Q. And do you -- are they still one of your
 14 accounts?
 15 A. No, sir.
 16 Q. Were they one of your accounts in 1998 when
 17 you became a NAM?
 18 A. No, sir.
 19 Q. So sometime in the interim they were your
 20 account?
 21 A. Right.
 22 Q. Okay. Do you recall when?
 23 A. Maybe '4 or '5.
 24 Q. 2004 or 2005?
 25 A. Yeah. Maybe '3 and '4. '3 and '4, '4 and

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1 '5, somewhere in there. I had them for a couple of
 2 years.
 3 Q. Is Innovatix a GPO?
 4 A. Yes, sir.
 5 Q. Are its -- is its membership long-term-care
 6 facilities?
 7 A. They may have some.
 8 Q. What other kinds of facilities?
 9 A. Home infusion, surgery centers.
 10 Q. Is that fairly typical of your GPO accounts
 11 that they typically have members that are home
 12 infusion centers, surgery centers, those two types of
 13 facilities?
 14 A. Yes. The larger GPOs also have a number of
 15 hospitals.
 16 Q. Have a number of hospitals, too?
 17 A. (Nodded head affirmatively).
 18 Q. VHA has hospital members, doesn't it?
 19 A. Correct.
 20 Q. So do I understand correctly that your
 21 testimony is since 1998 to present you've called on
 22 these accounts that we've mentioned over that time
 23 period, but you've never gained an understanding from
 24 any of them that Medicaid reimbursement was important
 25 to them?

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1 MR. BERLIN: Objection, form.
 2 Q. (BY MR. WINTER) Is that true?
 3 A. That's true, yeah.
 4 Q. Have you ever had any -- let's go away from
 5 the word "important" because maybe that's a code word
 6 that -- that might be misleading.
 7 Have you ever had occasion to discuss
 8 Medicaid reimbursement, and more particularly the
 9 reimbursement spread, with any of these accounts since
 10 1998?
 11 A. No.
 12 Q. Is there any time period -- let me ask you
 13 this question: What does the reimbursement spread
 14 mean to you?
 15 A. Reimbursement spread means there's a --
 16 there's a difference -- a delta between Point A and
 17 Point B and there's a pricing position.
 18 Q. If I define "reimbursement spread" as the
 19 difference between what a provider gets reimbursed on
 20 the one hand and what the provider pays to acquire the
 21 drug on the other, does that make sense to you?
 22 A. It could. I mean, yeah. I mean -- but, once
 23 again, it's not my scope. I mean --
 24 Q. I understand that. I understand.
 25 A. -- I don't -- I don't get into that.

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1 Q. I'm just asking you to follow along my
 2 hypothetical. So let's talk about PBI.
 3 A. Okay.
 4 Q. Let's say PBI's contract allows PBI to buy
 5 Abbott's drug for \$10.
 6 A. Okay.
 7 Q. I don't care what drug we are talking about.
 8 Any -- Vancomycin let's say.
 9 A. Okay.
 10 Q. Okay. If their contract allows -- PBI's
 11 contract allows PBI to purchase Vancomycin at \$10 but
 12 the reimbursement that PBI's members get for
 13 dispensing that Vancomycin to a Medicaid patient is,
 14 let's say, hypothetically \$25.
 15 A. Okay.
 16 Q. The difference between 25 and 10 is 15,
 17 right?
 18 A. Correct.
 19 Q. Would that be an example that you can
 20 understand and relate to as a reimbursement spread?
 21 A. I can understand that.
 22 Q. Okay. During any time that you were a
 23 district manager between -- let's talk about the time
 24 period 1993 to 1998.
 25 A. Okay.

22 (Pages 82 to 85)

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1 Q. Did you ever have occasion to speak, along
2 with any of your subordinate representatives, with any
3 of the customers within your region about the
4 reimbursement spread --

5 A. No.

6 Q. -- with a customer?

7 A. No.

8 Q. Never. Okay. And you never gained an
9 awareness or understanding that reimbursement spread
10 was in any way or shape or form important to those
11 customers while you were a DM?

12 A. No.

13 Q. Did you have an awareness that Abbott enjoyed
14 some success selling many of its injectable products
15 vis-a-vis its competitors because Abbott had a
16 favorable reimbursement spread?

17 MR. BERLIN: Objection, form.

18 A. No. Not --

19 Q. (BY MR. WINTER) You never had that
20 awareness --

21 A. No.

22 Q. -- that Abbott had success vis-a-vis
23 competitors in selling its products because of its
24 better spread?

25 MR. BERLIN: Objection, form.

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1 Q. (BY MR. WINTER) No?

2 A. Not as a DM, no.

3 Q. Let's forget about the success part of my
4 question.

5 A. Okay.

6 Q. Let me ask this question: At any time when
7 you were a district manager between 1993 and 1998 did
8 you have any knowledge that Abbott's reimbursement
9 spreads were better than its competitors for some
10 drugs?

11 A. No.

12 Q. At any time when you were a district manager
13 did you ever have an occasion where you learned of an
14 account telling your sales rep, who was responsible
15 for that account, that they wouldn't buy Abbott's
16 products because Abbott's spreads weren't as good or
17 weren't as competitive with, for example, Baxter or
18 McGaw?

19 A. I don't recall that.

20 Q. You don't recall that?

21 A. (Shakes head negatively).

22 Q. Now let's shift gears to when you were a
23 national account manager --

24 A. Okay.

25 Q. -- from 1998 through the present. Have you

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1 ever had an awareness that Abbott has a favorable
2 spread vis-a-vis its competitors?

3 A. Don't know that I've ever had that.

4 Q. You say you don't know that you've ever had
5 that awareness. Is there something that you're
6 thinking of that is some -- gives you pause in that
7 answer because it's a little -- I'm just curious about
8 your answer. So is there something that you're
9 thinking of that is sort of close to that but not
10 quite?

11 MR. BERLIN: Objection, form.

12 A. I think that, you know, as you come through
13 the other case all of a sudden, you know, there's data
14 that was asked of me then that, you know, is that --
15 that's confusing me. Did I -- no. I mean, I
16 didn't -- if I didn't know then, I don't know now and
17 now there is, to your point, awareness of AWP. There
18 is awareness now. But was there? No.

19 Q. (BY MR. WINTER) But you say you have an
20 awareness of AWP now?

21 A. Well, you just told me. Yeah.

22 Q. Do you recall at what point in time you
23 gained this awareness of AWP?

24 A. Probably the last few years.

25 Q. Was there any precipitating event that caused

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1 this awareness in your mind?

2 A. Well, I think the West Virginia deposition
3 opened, you know, to the AWP issues that -- brought it
4 up.

5 Q. Prior to giving your testimony in the West
6 Virginia litigation is it your testimony today that
7 you had no awareness of AWP?

8 A. "Awareness" is a big word. Did I know --
9 have I heard AWP? Yeah. Did I know what it meant?
10 No.

11 Q. So you learned what AWP meant after the
12 deposition that you gave in West Virginia or in the
13 course of preparing to give that deposition testimony?

14 A. Yeah. Understanding what the issue is with
15 AWP.

16 Q. You gained an understanding of what the issue
17 is with respect to AWP in the course of preparing to
18 give your deposition testimony in West Virginia, is
19 that what you're telling me?

20 A. During that time frame, yes.

21 Q. I'm just trying --

22 A. If that's what you're asking. I'm trying to
23 be clear, too.

24 Q. I appreciate that and I'm not trying to be

25 argumentative with you. I'm just trying to make sure

23 (Pages 86 to 89)

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EXHIBIT 78

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
United States of America,) Hon. Patti Saris
ex rel. Ven-a-Care of the)
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
and Hospira, Inc.)
CIVIL ACTION NO. 06-11337-PBS)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-CV-12257-PBS
)
THIS DOCUMENT RELATES TO:)
) Judge Patti B. Saris
State of Arizona v. Abbott)
Labs., et al.)
Civil Action No. 06-CV-11069-PBS)

ORAL AND VIDEOTAPED DEPOSITION OF
CHRISTINE SNEAD
April 19th, 2007

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<p style="text-align: right;">Page 130</p> <p>1 morning that you attended with Tom Hodgson and Kris 2 Kringel and with Coram? 3 A. Yes. I think it's the same meeting. 4 Q. So you believe that you attended this meeting 5 sometime in November of 1994? 6 A. Yes. 7 Q. Did you -- if I asked you this previously, 8 then I apologize, but let me ask it again now. 9 Did you attend any other meetings 10 regarding any of your other accounts with Mr. Hodgson 11 or Mr. Kringel? 12 A. Not that I recall. 13 Q. Does that -- do you, as you sit here today, 14 have the sense that that would be somewhat unusual for 15 high-level executives like Mr. Hodgson and Mr. Kringel 16 to be participating in a meeting with you on one of 17 your accounts? 18 A. Yes. 19 MS. GEISLER: Objection to the form. 20 Q. (BY MR. WINTER) Do you have any sense of why 21 it is that Mr. Hodgson and Mr. Kringel participated 22 with you in meeting with Coram on the issue of this 23 Coram RFP? 24 MS. GEISLER: Objection to the form. 25 A. As I said, they were a merger of several</p>	<p style="text-align: right;">Page 132</p> <p>1 at 10:56 a.m. 2 (Recess from 10:56 to 11:07) 3 THE VIDEOGRAPHER: We're back on the 4 record at 11:07 a.m. 5 Q. (BY MR. WINTER) Ms. Snead, I'm going to hand 6 you now what we've marked as Exhibit 708 and this 7 purports to be a memo. It's got a couple different 8 Bates labels on it. One is Ross 334959. And it's on 9 Abbott interoffice correspondence dated December 15, 10 1994 from Gerald J. Martin, Divisional Vice President, 11 AHD. And it's addressed to several people, including 12 Chris Bleck, who you and I spoke about a moment ago. 13 And it reads, "The Coram visit to Abbott 14 Park has been postponed due to new acquisition 15 activity. Jim Sweeney the CEO of Coram, has committed 16 that he does want to visit Abbott Park in October or 17 November. The invitation for this visit was a 18 personal one from Tom Hodgson and Kris Kringel. 19 "This delay has afforded us the 20 opportunity to gather more data. Specifically, we are 21 trying to find out what business we are currently 22 doing with Coram and what potential business we could 23 be doing. Coram is primarily in the home infusion 24 business, but they ... have a mail order pharmacy and 25 an ambulatory infusion center (for chemotherapy)" and</p>
<p style="text-align: right;">Page 131</p> <p>1 entities, so they were a very, very large home 2 infusion customer, so I think that's why they were 3 involved. 4 The other kind of interesting thing is 5 Jim Sweeney used to -- I believe used to head up McGaw 6 IV solutions, who was a competitor to Abbott in the 7 past, so ... 8 Q. (BY MR. WINTER) You think he had been the 9 head of McGaw before he went to Coram? 10 A. Yes. 11 MS. GEISLER: Objection to the form. 12 Q. (BY MR. WINTER) Do you know that for a fact 13 or is that just vague recollection? 14 A. Vague recollection. 15 Q. And McGaw was one of Abbott's competitors on 16 the infusion products? 17 A. Yes. IV solutions. 18 Q. The IV solution, the Dextrose and the sodium 19 chlorides, correct? 20 A. Yes. 21 MR. WINTER: Okay. Why don't we take a 22 short break. It's 11 o'clock. And want to take about 23 10 minutes? 24 MR. STETLER: Whatever fits your -- 25 THE VIDEOGRAPHER: We are off the record</p>	<p style="text-align: right;">Page 133</p> <p>1 "they want to expand. A current as of 9/1/94 list of 2 their facilities is attached. 3 "When Coram does visit, it is our 4 intention to have the framework" for "an agreement to 5 present to Jim Sweeney thus the need for this data. 6 "Chris Snead from HPD Alternate Site 7 Sales has volunteered to compile all the data. Please 8 send your information to her at:" and it has your name 9 and address. 10 "Coram is a major target for Abbott in 11 the alternate care market. Your cooperation is 12 greatly appreciated. 13 "Gery Martin." 14 Did I read that accurately? 15 A. Yes. 16 Q. Do you remember who Gerry Martin is? 17 A. Yes. 18 Q. Did you interact with Mr. Martin in this 19 response in or about the fall of 1994 and early 1995 20 to the Coram RFP? 21 A. I don't remember if he was involved with the 22 RFP response specifically. 23 Q. Was he one of the executives at the corporate 24 level who was interested in sealing the deal between 25 Abbott corporate and Coram?</p>

34 (Pages 130 to 133)

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<p style="text-align: right;">Page 286</p> <p>1 Kipperman. I've gotten cards from Mary Beth Manso in 2 the past, but not for probably three or four years. 3 That's all I can think of. 4 Q. Okay. Are you aware that -- that Mr. Stetler 5 represents other Abbott employees? 6 MR. STETLER: Other than through 7 discussions with me? 8 Q. (BY MS. ST. PETER-GRIFFITH) Yeah. Other 9 than through discussions -- 10 MS. ST. PETER-GRIFFITH: Yes. I'm 11 sorry. Thank you, Mr. Stetler. 12 A. No. 13 Q. (BY MS. ST. PETER-GRIFFITH) Okay. Has 14 anyone ever told you about any of the lawsuits, other 15 than -- other than Mr. Stetler, through your 16 conversations with counsel -- 17 A. Yes. 18 Q. -- has anyone discussed with you any of the 19 AWP litigation? 20 A. No. 21 MS. ST. PETER-GRIFFITH: Why don't we -- 22 this is a good breaking point for me, before we get 23 into my book of documents, so why don't -- why don't 24 we take a break for today. 25 THE WITNESS: Okay.</p>	<p style="text-align: right;">Page 288</p> <p>1 NO. D-1-GV-04-001286 2 THE STATE OF TEXAS) IN THE DISTRICT COURT 3) 4 ex rel.) 5 VEN-A-CARE OF THE) 6 FLORIDA KEYS, INC.,) 7 Plaintiffs,) 8) 9 VS.) TRAVIS COUNTY, TEXAS 10) 11 ABBOTT LABORATORIES INC.,) 12 ABBOTT LABORATORIES,) 13 HOSPIRA, INC., and B. BRAUN) 14 MEDICAL INC.,) 15 Defendant(s).) 201ST JUDICIAL DISTRICT 16 17 REPORTER'S CERTIFICATION 18 DEPOSITION OF CHRISTINE SNEAD 19 April 19, 2007 20 21 I, Cynthia Vohlken, Certified Shorthand 22 Reporter in and for the State of Texas, hereby certify 23 to the following: 24 That the witness, CHRISTINE SNEAD, was duly 25 sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness; That examination and signature of the witness to the deposition transcript was waived by the witness and agreement of the parties at the time of the deposition. That the amount of time used by each party at the deposition is as follows:</p>
<p style="text-align: right;">Page 287</p> <p>1 MS. ST. PETER-GRIFFITH: Okay. 2 THE VIDEOGRAPHER: Off the record? 3 MS. ST. PETER-GRIFFITH: Yes, we're off 4 the record. What time? 5 THE VIDEOGRAPHER: We are off the record 6 at 3:40 p.m. This concludes Tape Number 5. 7 8 (Deposition adjourned at 3:40 p.m.) 9 (Signature waived) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 289</p> <p>1 Mr. Raymond Winter - 03:01 2 Mr. Jarrett Anderson - 00:49 3 Ms. Ann St. Peter-Griffith - 01:27 4 That \$ is the deposition officer's 5 charges to the Plaintiffs for preparing the original 6 deposition transcript and any copies of exhibits; 7 That pursuant to information given to the 8 deposition officer at the time said testimony was 9 taken, the following includes counsel for all parties 10 of record: 11 MR. RAYMOND WINTER, 12 Attorney for Plaintiff State of Texas; 13 MR. JARRETT ANDERSON, 14 Attorney for the Relator; 15 MS. CAROL GEISLER, 16 Attorney for Defendants Abbott 17 Laboratories, Inc. and Hospira, Inc. 18 MS. ANN M. ST. PETER-GRIFFITH, 19 Attorney for Plaintiff United States of 20 America 21 MR. CHRISTOPHER STUART, 22 Attorney for Plaintiff State of Arizona 23 and MDL Plaintiffs 24 MR. ELISEO SISNEROS, Attorney for the 25 State of California That a copy of this certificate was served on all parties shown herein on May 4, 2007 and filed with the Clerk pursuant to Rule 203.3. I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.</p>

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1 Certified to by me this 4th day of May, 2007.
2
3
4
5



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EXHIBIT 79

Sullivan, Harry Leo

March 12, 2008

Nashville, TN

Page 1

UNITED STATES DISTRICT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of)
of the Florida Keys, Inc.)
v.) No.06-CV-11337-PBS
ABBOTT LABORATORIES, INC.,)
-----X

(cross captions appear on following pages)

Deposition of HARRY LEO SULLIVAN

Volume I

Nashville, Tennessee

Tuesday, March 12, 2008

9:05 a.m.

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Sullivan, Harry Leo

March 12, 2008

Nashville, TN

<p style="text-align: right;">Page 150</p> <p>1 concerns on whether or not the payment for these 2 kind of therapies was, was adequate? 3 A. Well, my opinion, particularly in the, 4 in the home health arena, was -- and during this 5 specific time period, the growth in Tennessee was 6 such of those type of providers that it wouldn't 7 -- that wouldn't -- not lead you to believe that 8 the reimbursement for Medicaid was inadequate. 9 When people are hollering and screaming 10 or you have trouble getting providers to take 11 care of your patients is when that was more 12 likely a concern. 13 Q. Well, do you know when the home 14 infusion business really started taking off? 15 A. Well, it certainly took off in the 16 early Nineties. And I can't remember -- and 17 Tennessee was a little bit different because we 18 very purposely avoided expansion of home 19 community based services under the Medicaid 20 program because the vast majority of the patients 21 who would receive those services were dual 22 eligibles, which meant they had Medicaid and</p>	<p style="text-align: right;">Page 152</p> <p>1 they're talking about when they talk about a 2 compounding fee? 3 A. Yes. 4 Q. And what, what is that? 5 A. Well, certain, be it -- I mean you can 6 compound IV drugs if you have the right equipment 7 and filters and hoods to keep it, make it a 8 sterile product. 9 And you can compound drugs for 10 inhalation. If you have, again, the right 11 equipment, similar to what would be in a 12 hospital, to, to handle sterile products. 13 And you take the raw ingredient and 14 mimic whatever, generally, the brand name or the 15 innovator product was. 16 Q. And do you know in Tennessee, either 17 before TennCare or after TennCare was paying a 18 compounding fee for IV? Do you know if that was 19 something that was being paid? 20 A. Ah, no. But there's, there's ways to 21 pay it without, without having a separate -- you 22 know, I noticed on here that one form is for</p>
<p style="text-align: right;">Page 151</p> <p>1 Medicare. And Medicare home health was, was 2 truly exploding. We had hundreds of providers in 3 Tennessee of home health services. I dare say 4 there's, you know, maybe 20 now. Because there 5 was, there was indeed a bonanza on the Medicare 6 side in Tennessee. Other states didn't face it 7 quite as -- if they had chosen to expand or had 8 very aggressive home community-based services 9 through Medicaid, might have had a little bit 10 different policy issues. We purely shifted to 11 Medicare, cost shifted to Medicare, with the 12 duals. And so it wasn't maybe not as, as intense 13 on a Medicaid issue in Tennessee as it might be 14 elsewhere is what I'm saying. 15 Q. The page starting with -- at 425 and 16 then going over to 426, there is a discussion of 17 what some states are doing in the home IV 18 reimbursement area, Minnesota indicates 19 compounding or a dispensing fee of \$8 for IV 20 drugs, and then Washington indicates that they're 21 paying a compounding amount, Ohio as well. 22 Do you have an understanding of what</p>	<p style="text-align: right;">Page 153</p> <p>1 payment, one form is for reimbursement of 2 supplies, one form is for -- you know, they're, 3 they're making a variety to submit multiple 4 forms. And I wouldn't -- I can't tell you a 5 specific product or specific time period, but one 6 of my strategies was in issues like this, where 7 compounding was involved, I didn't want to go 8 down the road, at least in the early Nineties, of 9 getting into paying for compounded prescriptions, 10 because that can -- that could range from a 11 sterile product all the way down to an ointment, 12 okay? 13 And, and our claims reimbursement 14 system hadn't evolved to the current NCPDP 15 sophistication of today. So it was very hard to 16 put in a, a set compounding fee for what, what 17 products? 18 One may take a minute to make, one may 19 take an hour and a half. 20 So getting back to, to the MAC issue, 21 some, sometimes for certain products in this 22 arena, you would take that into account for the</p>

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<p style="text-align: right;">Page 154</p> <p>1 MAC.</p> <p>2 For example, I might say, I'm not</p> <p>3 paying for the tape that you use to hold the IV</p> <p>4 needle into place. I'm not paying for the IV</p> <p>5 needle or the tube set. I'm not going to -- I</p> <p>6 don't want bills for that. I know you've got to</p> <p>7 do it to administer this drug. So we're going to</p> <p>8 add on the cost of this drug X, because I know</p> <p>9 this, this and this always goes with it, and I</p> <p>10 know there is a fixed cost for that, but I don't</p> <p>11 want five bills. I want 10 different places.</p> <p>12 Bill me for the drug. And I'll make sure that</p> <p>13 the -- whatever the MAC is incorporates all your</p> <p>14 other costs. And you have to talk with providers</p> <p>15 and know what that is. I mean, you know.</p> <p>16 Q. So, in short, you would use the payment</p> <p>17 for the drug itself to cross-subsidize other</p> <p>18 things that might need to be paid to fairly --</p> <p>19 A. And that would include compounding.</p> <p>20 Q. And it may include nursing services</p> <p>21 that were not included, things of that nature?</p> <p>22 A. (Nodding yes.)</p>	<p style="text-align: right;">Page 156</p> <p>1 addressed in this letter. I don't know. It</p> <p>2 seems to talk about different states, but I'm</p> <p>3 sure there were varying levels of complexity in</p> <p>4 the billing process, and what was and wasn't</p> <p>5 billable and what was and wasn't included, but I</p> <p>6 don't know it and I didn't discuss it with folks.</p> <p>7 Q. Have you heard the term cross-subsidy</p> <p>8 or cross-subsidization in the context of pharmacy</p> <p>9 reimbursement?</p> <p>10 A. No, not -- no, I haven't.</p> <p>11 Q. I'm going to show you another, another</p> <p>12 -- going to mark that as another exhibit.</p> <p>13 MR. TORBORG: I think this is 578.</p> <p>14 (Exhibit Abbott 578 marked.)</p> <p>15 BY MR. TORBORG:</p> <p>16 Q. For the record, what we have marked as</p> <p>17 Exhibit 578 bears the Bates numbers HHC 002-0400</p> <p>18 through 407. It's another Medicaid pharmacy</p> <p>19 bulletin. This one dated January-February of</p> <p>20 1988.</p> <p>21 Mr. Sullivan, if I could ask you to go</p> <p>22 to Bates page ending in 402. In particular the</p>
<p style="text-align: right;">Page 155</p> <p>1 Q. Did anyone in the federal government</p> <p>2 ever tell you that you were not allowed to do</p> <p>3 that?</p> <p>4 A. No.</p> <p>5 Q. And if they had told you that, what</p> <p>6 would you have said?</p> <p>7 A. That I wasn't allowed to pay for</p> <p>8 compounding or --</p> <p>9 Q. That you weren't allowed to use the</p> <p>10 payment for the drug to cross-subsidize those</p> <p>11 other services or supplies.</p> <p>12 A. If they had told me I couldn't do it,</p> <p>13 what would I do?</p> <p>14 Q. Yes.</p> <p>15 A. I would have had to have found another</p> <p>16 way to, to handle the billing.</p> <p>17 Q. But they never told you that.</p> <p>18 A. No.</p> <p>19 Q. Do you know if other states were doing</p> <p>20 -- were adopting similar type strategies to run</p> <p>21 the programs?</p> <p>22 A. No, I don't -- I mean it may be</p>	<p style="text-align: right;">Page 157</p> <p>1 discussion on the first full paragraph about</p> <p>2 Montana Medicaid. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Where it says, Similarly, Montana</p> <p>5 Medicaid compensates for the additional time and</p> <p>6 expense of dispensing compounded drugs by</p> <p>7 allowing the provider's usual and customary</p> <p>8 charge up to 2.5 times the cost of ingredients,</p> <p>9 paren, reimbursement for other outpatient drugs</p> <p>10 is a lower of AWP minus 10 percent, or the cost</p> <p>11 of the drug, end paren. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Is that the, the type of thing that</p> <p>14 Tennessee was doing?</p> <p>15 A. It's a different approach to -- yeah.</p> <p>16 Make -- paying the provider for the, for the</p> <p>17 compounding without -- and setting a limit on</p> <p>18 what I will pay up to two and a half percent.</p> <p>19 It's just a different, different twist.</p> <p>20 Q. Does it -- does this refresh your</p> <p>21 recollection about any other types of approaches</p> <p>22 like this that other states were using?</p>

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<p>1 A. Yes.</p> <p>2 Q. And before this lawsuit, have you ever</p> <p>3 heard of anyone talking about the, what the legal</p> <p>4 definition of average wholesale price would be?</p> <p>5 A. I, I don't remember that.</p> <p>6 Q. And --</p> <p>7 A. And I don't claim to know what the</p> <p>8 legal definition of AWP is. If I ever implied</p> <p>9 that, I didn't mean to.</p> <p>10 Q. Well, this is -- this paragraph says</p> <p>11 AWP is used to refer. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. It goes on.</p> <p>14 And so that means somebody is referring</p> <p>15 to AWP in a way that is calculated -- that is</p> <p>16 indicated in this complaint. Is that fair to</p> <p>17 say?</p> <p>18 MR. DRAYCOTT: Objection. Objection.</p> <p>19 A. That's the way I would read it.</p> <p>20 BY MR. TORBORG:</p> <p>21 Q. That's not the way -- you did not refer</p> <p>22 to AWP as the price at which a pharmaceutical</p>	<p>1 Q. And from your interactions with other</p> <p>2 state pharmacy administrators, do you believe</p> <p>3 that they use AWP to refer to the actual price at</p> <p>4 which pharmaceutical firms or wholesalers sold</p> <p>5 drugs to customers?</p> <p>6 MR. DRAYCOTT: Objection.</p> <p>7 A. I would just say globally that I don't</p> <p>8 think any pharmacist practicing retail pharmacy</p> <p>9 in particular ever believed AWP to be what people</p> <p>10 paid for drugs.</p> <p>11 MR. TORBORG: That's all the questions</p> <p>12 I have. Thank you very much.</p> <p>13 MR. DRAYCOTT: We are concluded.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 MR. DRAYCOTT: Thank you very much.</p> <p>16 VIDEOGRAPHER: This concludes the</p> <p>17 deposition of Leo Sullivan, Volume 1. The number</p> <p>18 of tapes used was five. Going off the record.</p> <p>19 Time now is 16:47.</p> <p>20 (Deposition concluded at 4:47</p> <p>21 p.m.)</p> <p>22</p>
Page 331	Page 333
<p>1 firm or wholesaler sold drugs to retail</p> <p>2 customers, did you?</p> <p>3 MR. DRAYCOTT: Objection.</p> <p>4 A. Yeah, I don't believe it to be true,</p> <p>5 but the previous statement you made, that is the</p> <p>6 way I would read it, too, is it is used by some</p> <p>7 people, or by the Blue Book, or the industry as,</p> <p>8 you know, the price that it's -- I believe people</p> <p>9 would say that, but that's not actually true</p> <p>10 sometimes.</p> <p>11 Q. And that's not how -- you never used</p> <p>12 AWP to refer to the price at which pharmaceutical</p> <p>13 firms or wholesalers sold drugs to customers?</p> <p>14 A. Actually paid for it, no.</p> <p>15 Q. So Mr. Draycott and the other</p> <p>16 Department of Justice lawyers may use it to refer</p> <p>17 to that, but that's not what you use to refer to</p> <p>18 it; is that right?</p> <p>19 MR. DRAYCOTT: Objection.</p> <p>20 A. I don't think AWP is the price a</p> <p>21 drugstore pays for, for a drug.</p> <p>22 BY MR. TORBORG:</p>	<p>1 SIGNATURE OF THE WITNESS</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 HARRY LEO SULLIVAN</p> <p>8</p> <p>9 Subscribed and sworn to and before me</p> <p>10 this _____ day of _____, 20____.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Notary Public</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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March 12, 2008

Nashville, TN

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REPORTER'S CERTIFICATE

I, Fred W. Jeske, Court Reporter and
State of Tennessee at-large Notary Public, do
hereby certify that I recorded to the best of my
skill and ability by machine shorthand all the
proceedings in the foregoing transcript, and
that said transcript is a true, accurate, and
complete transcript to the best of my ability.

I further certify that I am not an
attorney or counsel of any of the parties, nor a
relative or employee of any attorney or counsel
connected with the action, nor financially
interested in the action.

SIGNED this 19th day of March, 2008.

Fred W. Jeske, Court Reporter
State of Tennessee
At-large Notary Public
My Commission Expires: November
14, 2009

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EXHIBIT 80

March 31, 2008

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----)
In re: PHARMACEUTICAL)MDL No. 1456
INDUSTRY AVERAGE WHOLESALE)CIVIL ACTION
PRICE LITIGATION)01-12257-PBS
-----)
THIS DOCUMENT RELATES TO:)Judge Patti B. Saris
United States of America,)
ex rel. Ven-A-Care of the)Chief Magistrate
Florida Keys, Inc.,)Judge Marianne B.
CIVIL ACTION NO. 06-11337-PBS)Bowler
-----)

Videotaped Deposition of
SCOT A. STEENOLSEN, held at 555 South Flower Street,
Los Angeles, California, commencing at 9:23 a.m.,
Monday, March 31, 2008, before Janice Schutzman, CSR
No. 9509.

Steenolsen, Scot A. CONFIDENTIAL
Los Angeles, CA

March 31, 2008

<p style="text-align: right;">Page 194</p> <p>1 Again, this -- I think this was done 2 after I -- obviously I went through training 3 already. 4 THE REPORTER: I'm sorry. After? 5 THE WITNESS: After this -- after I was 6 -- I had went through training already. 7 BY MS. FORD: 8 Q. This document indicates, does it not, 9 that you contributed to it? 10 A. That's what it says. But again, I 11 don't know what my contributions were. 12 MS. FORD: Hand you what we'll mark 13 Exhibit 15. 14 (Exhibit Steenolsen 015 was marked 15 for identification.) 16 BY MS. FORD: 17 Q. Do you recognize this document? 18 A. Yeah. It looks like an email that I 19 had sent to Mike Novak. 20 Q. And what was Mr. Novak's position in 21 March of 2003? 22 A. I think -- I'm not sure. I think he</p>	<p style="text-align: right;">Page 196</p> <p>1 manager was easier to get ahold of. 2 Q. You mean your district manager was 3 easier to get ahold of? 4 A. Yes. 5 Q. Okay. If it's a matter of sending an 6 email, though, don't you just hit send and it 7 goes where it goes? 8 MR. SCANNAPIECO: Objection, form. 9 THE WITNESS: If you're in front of a 10 computer. A lot of the time I was out in the 11 field. 12 BY MS. FORD: 13 Q. Okay. 14 Do you recall customers or a customer 15 being interested in the reimbursement for the Gem 16 set? 17 A. Yeah, I don't -- I don't remember it 18 coming up much. Because by, you know -- I don't 19 know. I don't remember. Because I had already 20 been working with Abbott for six years and I -- I 21 don't ever remember doing it before, asking a 22 marketing manager for -- a question like this.</p>
<p style="text-align: right;">Page 195</p> <p>1 was marketing manager. 2 Q. And it says, "Mike, can you let me know 3 the reimbursement" and then in parenthesis, 4 "medi-cal/medi-caid for the gem sets? Thanks, 5 Scot." 6 Is that right? 7 A. Yes. 8 Q. Do you recall -- do you recall this 9 situation or this -- 10 A. No. 11 Q. -- circumstance? 12 A. I don't. 13 Q. And here you're emailing Mike Novak of 14 the marketing department directly; is that right? 15 A. Yes. 16 Q. You're not going through Debbie 17 Paulson? 18 A. No. 19 Q. Were -- I guess in terms of Abbott 20 procedure, was it okay for you to have direct 21 contact with the marketing department? 22 A. Yeah, I guess you could. Usually if a</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. Did you ask marketing managers other 2 types of questions? 3 A. Yeah. Usually I ask them when products 4 were coming off back order, inventory status. 5 Customers didn't like to -- to buy things that 6 weren't readily available. So that's generally 7 what I communicated with. 8 Q. In those situations, did you usually 9 just call them or email them directly? 10 A. I usually called if I could get them. 11 And if not, I usually would call somebody else, 12 you know, another sales rep or my manager. 13 Q. The second email in the chain is from 14 Mike Novak to Robert Lyman and with a CC to you 15 and to Debbie Paulson. 16 Do you see that? 17 A. Yes. 18 Q. Do you know Bob Lyman? 19 A. No, I don't. 20 Q. And after you sent this message to Mike 21 Novak, do you recall having a conversation with 22 him about the customer's interest in</p>

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Los Angeles, CA

March 31, 2008

<p style="text-align: right;">Page 198</p> <p>1 reimbursement information on Gem sets?</p> <p>2 A. I don't remember specifically. I know</p> <p>3 the -- the Gemstar pump, in which the Gem set, I</p> <p>4 guess, that I'm referring to here, was a new</p> <p>5 product. So I'm just guessing that that's</p> <p>6 probably why it hadn't been -- I don't know if it</p> <p>7 was out and available at this time or what.</p> <p>8 Q. Were customers typically interested in</p> <p>9 whether an Abbott product was reimbursable?</p> <p>10 MR. SCANNAPIECO: Objection, form.</p> <p>11 THE WITNESS: No. It never --</p> <p>12 reimbursement really wasn't an issue.</p> <p>13 BY MS. FORD:</p> <p>14 Q. What do you mean, it wasn't an issue?</p> <p>15 A. Well, it -- I'd only had, I think, one</p> <p>16 or two customers complain to me about it, and I</p> <p>17 would always explain to them that I had nothing</p> <p>18 to do with it, and I'd let, you know, our people</p> <p>19 know that they were unhappy. But it was</p> <p>20 something that I didn't understand how it worked,</p> <p>21 and I wasn't involved in anything about it. So -</p> <p>22 - but it wasn't a very common, you know,</p>	<p style="text-align: right;">Page 200</p> <p>1 understand specifically how they got paid.</p> <p>2 Q. Well, here you're talking about MediCal</p> <p>3 and Medicaid reimbursement; right?</p> <p>4 A. Right.</p> <p>5 Q. Did you understand that your customers</p> <p>6 would be reimbursed for the products that they</p> <p>7 purchased from Abbott by Medicaid?</p> <p>8 MR. SCANNAPIECO: Objection, form.</p> <p>9 THE WITNESS: I didn't understand</p> <p>10 that's, I guess, how reimbursement worked at all,</p> <p>11 and I never really wanted to know. It wasn't</p> <p>12 something I spent time looking for. So it was --</p> <p>13 that's why -- you can see here that I didn't know</p> <p>14 really where to go with this.</p> <p>15 BY MS. FORD:</p> <p>16 Q. We deposed Ms. Paulson on Friday, and</p> <p>17 she testified that she provided training on</p> <p>18 reimbursement at district meetings and district</p> <p>19 conference calls and in ride-alongs and coaching</p> <p>20 sessions. And we specifically asked her whether</p> <p>21 she provided that information to you, and she</p> <p>22 said yes.</p>
<p style="text-align: right;">Page 199</p> <p>1 discussion. Didn't come up often at all.</p> <p>2 Q. In the situations where it did come up,</p> <p>3 why did -- what was your understanding of why</p> <p>4 your customers weren't happy about reimbursement?</p> <p>5 A. Well, again, I --</p> <p>6 MR. SCANNAPIECO: Objection --</p> <p>7 THE WITNESS: Go ahead.</p> <p>8 MR. SCANNAPIECO: Objection, form.</p> <p>9 THE WITNESS: I usually tried to cut</p> <p>10 them off because it wasn't something that I was</p> <p>11 really supposed to communicate or talk to them</p> <p>12 about at all. And they were -- they were</p> <p>13 passionate -- some of them were passionate about,</p> <p>14 you know, trying to keeping their costs down and</p> <p>15 what have you, and they would try to talk to me</p> <p>16 about it, and that's why I would kind of, you</p> <p>17 know, decline the discussion with them.</p> <p>18 BY MS. FORD:</p> <p>19 Q. You understood, though, didn't you,</p> <p>20 that reimbursement was how your customers got</p> <p>21 paid?</p> <p>22 A. No. I didn't -- I didn't really</p>	<p style="text-align: right;">Page 201</p> <p>1 Do you disagree with Ms. Paulson's</p> <p>2 testimony?</p> <p>3 MR. SCANNAPIECO: Objection, form.</p> <p>4 THE WITNESS: I don't understand in</p> <p>5 regards to training on reimbursement. What does</p> <p>6 that mean? Training on what?</p> <p>7 BY MS. FORD:</p> <p>8 Q. On the importance of reimbursement to</p> <p>9 customers, for one?</p> <p>10 MR. SCANNAPIECO: Objection, form.</p> <p>11 THE WITNESS: I don't recall ever being</p> <p>12 trained on the importance of reimbursement.</p> <p>13 BY MS. FORD:</p> <p>14 Q. And that, depending on the market</p> <p>15 channel, customers are reimbursed differently for</p> <p>16 products?</p> <p>17 MR. SCANNAPIECO: Objection, form.</p> <p>18 THE WITNESS: Again, I couldn't tell</p> <p>19 you what -- what they were reimbursed and how it</p> <p>20 was calculated.</p> <p>21 BY MS. FORD:</p> <p>22 Q. I'm not asking if you could tell me how</p>

51 (Pages 198 to 201)

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EXHIBIT 81

Baton Rouge, LA

Page 1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL * MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE * MASTER FILE NO.
PRICE LITIGATION * 01-CV-12257-PBS
*
THIS DOCUMENT RELATES TO: * JUDGE PATTI B.
U.S. EX REL. VEN-A-CARE OF * SARIS
THE FLORIDA KEYS, INC. V. * MAGISTRATE
DEY INC., ET AL * MARIANNE BOWLER
NO. 05-11084-PBS, AND *
U.S. EX REL VEN-A-CARE OF *
THE FLORIDA KEYS, INC., ET *
AL V. BOEHRINGER INGELHEIM * (Cross-noticed
CORP, ET AL * captions on
NO.07-10248-PBS * following pages.)

* * * * *

November 7, 2008

Transcript of the videotaped Rule
30(b)(6) deposition of the LOUISIANA
DEPARTMENT OF HEALTH AND HOSPITALS through
MARY JULIA TERREBONNE

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4f51dae7-223c-46dc-90f5-5835e793cf26

Baton Rouge, LA

<p style="text-align: right;">Page 90</p> <p>1 A. Right.</p> <p>2 Q. How was it that -- And that dispensing</p> <p>3 fee is significantly lower than at least what</p> <p>4 Myers and Stauffer is indicating it cost to</p> <p>5 dispense the home I.V. drug; is that right?</p> <p>6 A. I'm sorry. Could you state your</p> <p>7 question again?</p> <p>8 MR. TORBORG: Could I ask the court</p> <p>9 reporter to read that one back?</p> <p>10 (Whereupon the previous question was</p> <p>11 read back by the court reporter.)</p> <p>12 THE WITNESS: I still don't get it.</p> <p>13 The -- the report shows that it cost</p> <p>14 more to dispense I.V.s [sic] prescriptions than</p> <p>15 non-I.V. prescriptions.</p> <p>16 BY MR. TORBORG:</p> <p>17 Q. And it's showing an unweighted mean</p> <p>18 cost for pharmacies dispensing home I.V.</p> <p>19 prescriptions of \$18.57; correct?</p> <p>20 A. Correct.</p> <p>21 Q. But Louisiana is only paying at this</p> <p>22 time \$5.77; right?</p>	<p style="text-align: right;">Page 92</p> <p>1 A. I believe what he's saying is that</p> <p>2 there's a margin on the ingredient side, so</p> <p>3 that's how they're generally able to dispense.</p> <p>4 Q. And this is something that -- that you</p> <p>5 would have read back in 1999; correct?</p> <p>6 MR. FAUCI: Objection to form.</p> <p>7 THE WITNESS: Probably.</p> <p>8 BY MR. TORBORG:</p> <p>9 Q. Okay. And if you disagreed with that</p> <p>10 footnote, would you have told Myers and Stauffer</p> <p>11 that?</p> <p>12 A. Well, they were the surveyors, so they</p> <p>13 had the information. We were relying on --</p> <p>14 Q. Well, was it your understanding, Miss</p> <p>15 Terrebonne, that because of the higher cost to</p> <p>16 dispense home I.V. drugs and the fact that</p> <p>17 Louisiana was only paying a \$5.77 dispensing fee</p> <p>18 for those drugs, that the margin being earned on</p> <p>19 the ingredient cost was covering that cost to</p> <p>20 dispense?</p> <p>21 MR. FAUCI: Objection to form.</p> <p>22 THE WITNESS: Based upon the survey</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Right.</p> <p>2 Q. How is it that Louisiana is able to</p> <p>3 compensate the providers of home I.V. therapy</p> <p>4 their cost to dispense those drugs?</p> <p>5 MR. FAUCI: Objection to the form.</p> <p>6 THE WITNESS: How is it?</p> <p>7 BY MR. TORBORG:</p> <p>8 Q. Yes.</p> <p>9 A. Well, we do. We pay them in accordance</p> <p>10 with our current reimbursement methodology.</p> <p>11 Q. If you look to the footnote 8 on page</p> <p>12 21 of the Myers and Stauffer report --</p> <p>13 A. Right.</p> <p>14 Q. -- that states -- Would you read that</p> <p>15 into the record?</p> <p>16 A. "Although typical dispensing fees</p> <p>17 reimburse less than the dispensing cost of I.V.</p> <p>18 pharmacies, they are generally able to break even</p> <p>19 based on the margin allowed on ingredient cost</p> <p>20 reimbursement."</p> <p>21 Q. And do you have an understanding of --</p> <p>22 of what that's saying?</p>	<p style="text-align: right;">Page 93</p> <p>1 results, yes.</p> <p>2 BY MR. TORBORG:</p> <p>3 Q. Let's go to Abbott topic -- the Abbott</p> <p>4 cross-notice, topic number 16. This is titled</p> <p>5 "DOJ AWP," and the area of inquiry reads "Your</p> <p>6 implementation of revised average wholesale price</p> <p>7 information developed by the United States</p> <p>8 Department of Justice and NAMFCU, the dates when</p> <p>9 you did or did not implement the revised pricing</p> <p>10 information, and the reasons why you did or did</p> <p>11 not implement the revised pricing information."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And do you have an understanding of</p> <p>15 what we're getting at there?</p> <p>16 A. No.</p> <p>17 Q. Are you aware of the so-called DOJ AWP</p> <p>18 effort?</p> <p>19 A. No.</p> <p>20 Q. Do you recall, just to see if it</p> <p>21 refreshes your recollection at all, that around</p> <p>22 1999 to 2000, there was an effort by the National</p>

24 (Pages 90 to 93)

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WITNESS' CERTIFICATE

I, MARY JULIA TERREBONNE, read or have had the foregoing testimony read to me and hereby certify that it is a true and correct transcription of my testimony, with the exception of any attached corrections or changes.

MARY JULIA TERREBONNE

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REPORTER'S CERTIFICATE

I, CATHERINE C. GAUDET, CCR, Certified Court Reporter for the State of Louisiana, do hereby certify that the above-mentioned witness, after having been first duly sworn by me to testify to the truth, did testify as hereinabove set forth;

That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding;

That I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

CATHERINE C. GAUDET, CCR
Certified Court Reporter
State of Louisiana
Certificate No. 84108

57 (Pages 222 to 223)

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EXHIBIT 82

1 C O N F I D E N T I A L
2 IN THE CIRCUIT COURT OF KANAWHA COUNTY
3 WEST VIRGINIA
4 CIVIL ACTION NO. 01-C-3011
5

6 -----X

7 STATE OF WEST VIRGINIA ex rel
8 DARRELL V. McGRAW, JR., ATTORNEY
9 GENERAL,
10

11 Plaintiff,

12 -against-

13 WARRICK PHARMACEUTICALS
14 CORPORATION, SCHERING-PLOUGH
15 CORPORATION, DEY, INC., ABBOTT
16 LABORATORIES, and ABBBOTT
17 LABORATORIES, INC.,
18

19 Defendants.
20

21 -----X
22

23 DEPOSITION OF VIRGINIA TOBIASON
24 THURSDAY, JUNE 2, 2005
25

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CONFIDENTIAL

I'm asking you whether it is true that Abbott would receive -- let's start again.

Abbott would receive a percentage of reimbursement for its service in submitting a claim for reimbursement; isn't that true?

A We would submit -- we would get paid for our services. The billing service we provided to clients.

Q Okay. And the way you would get paid for submitting that service would, in some instances, be a percentage of the reimbursement; isn't that true?

A In some instances, depending on the client, we would get paid a percentage of collections.

Q Okay. And if the -- if Abbott collected based on a product acquisition as opposed to a per diem, there would be a spread between what the customer paid for the product and what the customer reimbursed; isn't that true?

MS. TABACCHI: Objection to the form, foundation, mischaracterizes the witness's prior testimony, assumes facts not in evidence.

THE WITNESS: We got paid a percentage for -- we got paid for our reimbursement services that included submitting claims on behalf of patients and our customers for products and services. It was not solely product.

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CONFIDENTIAL

BY MR. BARRETT:

Q Okay. If a patient -- if you submitted -- Abbott submitted a claim for Medicaid reimbursement based on the acquisition of a product by your customer, okay, your customer -- and let's rephrase it because I'm using your term and I shouldn't.

When your customer purchased Vancomycin or a sodium chloride solution, if a Medicaid claim was paid for reimbursement on that purchase, the customer would obtain a spread between -- meaning the difference between what it paid and what was reimbursed; isn't that right?

MS. TABACCHI: Objection to the form.

THE WITNESS: The customer would receive the reimbursement that was established by the payor.

BY MR. BARRETT:

Q Okay. And then Abbott would get a percentage of that reimbursement?

A Yes.

Q Okay.

A If that was what the contract stated.

Q Okay. We were provided a contract yesterday, and I'm going to show it to you and, before we make it an exhibit, I'm going to let you take a look -- tell you what, before we do that, I'm going to hand you a

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CONFIDENTIAL

document which is Bates stamped ABTWV16864 dated December 10, 1996, and I'll just ask you whether you've ever seen that document before?

MS. TABACCHI: Do you have a copy of that?

MR. BARRETT: I don't have another copy.

MS. TABACCHI: Can we take a quick break so I can

--

MR. BARRETT: We're going to. Actually, I hadn't decided whether to make it an exhibit or not.

MS. TABACCHI: All right. Go ahead. We'll keep going. If you're going to elaborate on it, I'll go get a copy.

MR. BARRETT: That's right. I just want to ask her one question before we start so I have an idea.

THE WITNESS: All right. Yes.

MR. BARRETT: Okay. Let's go ahead and make a copy of that document.

MS. TABACCHI: Do you want to ask her when she saw it?

MR. BARRETT: Yes.

BY MR. BARRETT:

Q When did you see that document?

A Well, I may have seen it when it was

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CONFIDENTIAL

signed, and I saw it yesterday.

MR. BARRETT: Okay. Let's go ahead and make a copy of that.

THE VIDEOGRAPHER: We're going off the record. The time is 12:56.

(WHEREUPON, a recess was taken, after which the proceedings resumed as follows:)

(WHEREUPON, Exhibit Nos. 1 and 2 were marked for Identification.)

THE VIDEOGRAPHER: We're going back on the record. The time is 1:06.

BY MR. BARRETT:

Q Exhibit No. 1 should be the document dated December 10, 1996. Is that what you have?

A I do.

Q Okay. And what is this document?

A I would have to look at it. I don't know.

Q Well, let's see if we can help out a little bit. Was there a proposal of some kind?

A This was a --

MS. TABACCHI: Objection.

THE WITNESS: This wasn't the area -- I was not in contract marketing.

14 (Pages 50 to 53)

Page 86

1 CONFIDENTIAL

2 your direction ever submitted ingredient costs as part of

3 a reimbursement claim?

4 A If the payor required that, we would have.

5 Q What did you use -- what would you use as

6 the ingredient cost?

7 MS. TABACCHI: Object to the form of the question.

8 THE WITNESS: You know, I really -- I don't know.

9 It would depend on what the payor required. It would be

10 specific to a payor.

11 BY MR. BARRETT:

12 Q All right. Have you ever heard the term

13 estimated acquisition cost?

14 A Yes.

15 Q Do you know what that term means?

16 A No.

17 MS. TABACCHI: Object to the form.

18 THE WITNESS: No, I don't.

19 BY MR. BARRETT:

20 Q In what context have you heard it?

21 A I just heard that there was an estimated

22 acquisition cost.

23 Q In what context?

24 A I don't remember.

25 Q Did it have to do with Medicaid?

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1 CONFIDENTIAL

2 A I don't -- I don't remember.

3 Q Were you ever involved in any discussions

4 concerning estimated acquisition cost?

5 MS. TABACCHI: Object to the form.

6 THE WITNESS: Not that I remember.

7 BY MR. BARRETT:

8 Q Have you ever heard the term ASP?

9 A Yes.

10 Q Okay. What does that term mean?

11 A Average selling price.

12 Q All right. Did you ever use the ASP in

13 your work?

14 A You need to be specific as to the time

15 period.

16 Q Okay. Well, let me ask you generally.

17 Have you ever used it in your work?

18 A Yes.

19 Q And in what -- in what job did you use

20 that?

21 A In my current job.

22 Q Okay. What do you use it for now?

23 A We're required to report to Medicare our

24 ASPs on a quarterly basis.

25 Q Is that the first time you used that ASP in

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1 CONFIDENTIAL

2 connection with your current job?

3 A Yes.

4 Q Okay. Do you ever use the WAC or wholesale

5 acquisition cost?

6 A No.

7 Q Have you ever used WAC in your job or your

8 work?

9 MS. TABACCHI: Object to the form.

10 THE WITNESS: To the best of my knowledge, no.

11 MR. BARRETT: I'm going to take a few minutes. I

12 probably have a few -- a little bit more questioning, but

13 I have a lot of documents here that I don't want to ask

14 about, but I want to at least look at them and see if

15 there's something I need to cover.

16 MS. TABACCHI: Sure. How much time do you need?

17 MR. BARRETT: Why don't you give me about ten

18 minutes. Let's take about a ten-minute break.

19 THE VIDEOGRAPHER: We are now going off the

20 record. The time is 2:05.

21 FURTHER DEPONENT SAITH NOT.

22

23

24

25

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1 CONFIDENTIAL

2 IN THE CIRCUIT COURT OF KANAWHA COUNTY

3 WEST VIRGINIA

4 CIVIL ACTION NO. 01-C-3011

5 -----X

6 STATE OF WEST VIRGINIA ex rel

7 DARRELL V. McGRAW, JR., ATTORNEY

8 GENERAL,

9 Plaintiff,

10 -against-

11 WARRICK PHARMACEUTICALS

12 CORPORATION, SCHERING-PLOUGH

13 CORPORATION, DEY, INC., ABBOTT

14 LABORATORIES, and ABBOTTLABORATORIES, INC.,

15 Defendants.

16 -----X

17 DEPOSITION OF VIRGINIA TOBIASON

18 THURSDAY, JUNE 2, 2005

19 I, VIRGINIA TOBIASON, state that I have read the

20 foregoing transcript of the testimony given by me at my

21 deposition on the 2nd day of June, 2005, and that said

22 transcript constitutes a true and correct record of the

23 testimony given by me at said deposition except as I have

24 so indicated on the errata sheets provided herein.

25

26 VIRGINIA TOBIASON

27 No corrections (Please initial) _____

28 Number of errata sheets submitted _____

29 SUBSCRIBED AND SWORN to

30 Before me this _____ day

31 Of _____, 2005

32 Notary Public

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 C O N F I D E N T I A L</p> <p>2 CASE NAME: State of West Virginia vs. Warrick Pharmaceuticals</p> <p>3</p> <p>4 Deposition of: Virginia Tobiason</p> <p>5 Date Taken: June 2nd, 2005</p> <p>6 Page Line Change:</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Date:</p> <p>24 Signature:</p> <p>25</p>	<p style="text-align: right;">Page 92</p> <p>1 C O N F I D E N T I A L</p> <p>2 deposition was pursuant to agreement, and that there were</p> <p>3 present at the deposition the attorneys hereinbefore</p> <p>4 mentioned.</p> <p>5 I further certify that I am not counsel for</p> <p>6 nor in any way related to the parties to this suit, nor am</p> <p>7 I in any way interested in the outcome thereof.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 Deborah A. Bridges</p> <p>13 Certified Shorthand Reporter</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 91</p> <p>1 C O N F I D E N T I A L</p> <p>2 STATE OF ILLINOIS)</p> <p>) SS:</p> <p>3 COUNTY C O O K)</p> <p>4</p> <p>5 I, Deborah A. Bridges, CSR No. 84-002516,</p> <p>6 do hereby certify that heretofore, to-wit, on the 2nd day</p> <p>7 of June, 2005, personally appeared before me at 77 West</p> <p>8 Wacker Street, Chicago, Illinois, VIRGINIA TOBIASON, in a</p> <p>9 cause now pending and undetermined in the Circuit Court of</p> <p>10 West Virginia, wherein Darrell McGraw, etal are the</p> <p>11 Plaintiffs, and Warrick Pharmaceuticals, et al. are the</p> <p>12 defendants.</p> <p>13 I further certify that the said witness was</p> <p>14 first duly sworn to testify the truth, the whole truth</p> <p>15 and nothing but the truth in the cause aforesaid; that the</p> <p>16 testimony then given by said witness was reported</p> <p>17 stenographically by me in the presence of the said</p> <p>18 witness, and afterwards reduced to typewriting by</p> <p>19 Computer-Aided Transcription, and the foregoing is a true</p> <p>20 and correct transcript of the testimony so given by said</p> <p>21 witness as aforesaid.</p> <p>22 I further certify that the signature to the</p> <p>23 foregoing deposition was not waived by counsel for the</p> <p>24 respective parties.</p> <p>25 I further certify that the taking of this</p>	

24 (Pages 90 to 92)

EXHIBIT 83

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
United States of America,) Hon. Patti Saris
ex rel. Ven-a-Care of the)
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
and Hospira, Inc.)
CIVIL ACTION NO. 06-11337-PBS)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-CV-12257-PBS
)
THIS DOCUMENT RELATES TO:)
) Judge Patti B. Saris
State of Arizona v. Abbott)
Labs., et al.)
Civil Action No. 06-CV-11069-PBS)

ORAL AND VIDEOTAPED DEPOSITION OF
VIRGINIA TOBIASON

HIGHLY CONFIDENTIAL

March 28, 2007

Volume 1

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

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Page 214

1 corporate had to do with reimbursement for devices?
2 A. I'm saying I worked on things that need my
3 attention and at that time devices, we had -- I worked
4 on devices primarily.

5 Q. All right. So when you -- when you learned
6 from the newspaper, or whatever, that -- that Abbott's
7 being sued and there's these investigations going on
8 in Congress and by the government and the Justice
9 Department about Abbott's reporting of prices used for
10 reimbursement services involving drugs that you used
11 to be interested in when you were the manager of
12 reimbursement for Home Infusion Services, didn't it
13 cause you to stop and think that maybe you ought to
14 figure out what's going on there and why that is?

15 MS. TABACCHI: Object to the form.

16 A. We were not a provider of services at that
17 time.

18 Q. (BY MR. BREEN) At what time?

19 A. When I was director of corporate
20 reimbursement.

21 Q. Okay. So back when you were a provider of
22 services, either you were provided the services or you
23 were paying somebody else to provide the services
24 because Abbott stopped submitting its own provider
25 claims in late -- in the late '80s, correct?

Page 215

1 A. No.

2 MS. TABACCHI: Object to the form.

3 Q. (BY MR. BREEN) Didn't you testify earlier
4 that at some point in the late '80s Abbott stopped
5 being the provider of HCFA 1500 forms and -- and --

6 A. Yes.

7 MS. TABACCHI: If you could allow
8 Mr. Breen to finish his question.

9 Q. (BY MR. BREEN) -- and allow -- allowed
10 contractors to be the providers, isn't that your
11 testimony?

12 A. You're mischaracterizing my testimony.

13 Q. All right. Then correct me.

14 A. Abbott provided -- billed for services in the
15 '80s as Abbott Homecare.

16 Q. Right.

17 A. Then after that our customers became
18 providers of service. We provided subcontracted
19 services to them. They were the providers of
20 services.

21 Q. But you still had the four pharmacies, right?

22 A. Yes.

23 Q. Okay. So they were Abbott pharmacies, but
24 you were -- you had providers that were billing in
25 those pharmacies, correct?

Page 216

1 MS. TABACCHI: Object to the form.

2 A. I don't understand the question.

3 Q. (BY MR. BREEN) Well, then maybe I didn't
4 understand your earlier testimony. The four
5 pharmacies, remember?

6 A. Yes.

7 Q. The ones that were owned by Abbott all the
8 way up until the time you left Home Infusion Services
9 in 1998, those four pharmacies.

10 A. Three pharmacies.

11 Q. They became three at some point. The one in
12 Atlanta, it was gotten rid of, right?

13 MS. TABACCHI: Object to the form.

14 Q. (BY MR. BREEN) But you don't recall when
15 that happened, do you?

16 A. I think it was in the '80s.

17 Q. Sometime in the '80s. All right. There was
18 three pharmacies then that Abbott owned all the way
19 through the '90s, at least up until '98. When it
20 billed the Medicare program in the '90s, was Abbott
21 identified as the provider on the HCFA 1500 form?

22 MS. TABACCHI: Object to the form.

23 A. No.

24 Q. (BY MR. BREEN) Okay. Who was?

25 A. The customer.

Page 217

1 Q. Who owned the pharmacy?

2 A. We did.

3 Q. So you owned the pharmacy, Abbott did, and
4 had somebody called a customer that was a what, a
5 pharmacist?

6 MS. TABACCHI: Object to the form.

7 Q. (BY MR. BREEN) Who was the customer? If
8 Abbott owned the pharmacy, who was the customer for
9 the three pharmacies?

10 A. It would have been one of our clients. Could
11 have been one of our clients.

12 Q. A client. Okay.

13 A. In some cases, yes.

14 Q. We only have three pharmacies here. So let's
15 just talk about those three pharmacies, okay? Just
16 those three pharmacies. Who had the license for those
17 pharmacies?

18 A. Abbott.

19 Q. Abbott did. So Abbott had three licensed
20 infusion pharmacies in the '90s up until 1998 when you
21 left, at least, correct?

22 A. Yes.

23 Q. All right. So Abbott was on the license.
24 Who did the pharmacist work for?

25 A. Abbott.

55 (Pages 214 to 217)

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Page 222	Page 224
<p>1 you for your patience. I hope your -- your foot gets 2 better fast.</p> <p>3 THE WITNESS: Thank you.</p> <p>4 MS. ST. PETER-GRIFFITH: Before we go 5 off the record though, the government has a statement. 6 We have outstanding discovery requests 7 to Abbott and obviously -- and we took the deposition 8 of Ms. Klaus a couple of weeks ago concerning the 9 litigation hold on those -- on the various requests 10 that have been -- that have been served upon Abbott by 11 the government dating back to 1986. To the extent 12 that this -- that this witness discussed the shredding 13 of documents, in addition, you know, just the general 14 production of this policy we have not seen and I would 15 ask that Ms. Tabacchi look into -- look into that 16 issue.</p> <p>17 Additionally, this -- this witness 18 testified to the federal government office, which 19 obviously just from its title sounds like it might be 20 an entity that has documents responsive to our 21 production request, and I would ask that you look into 22 the production from that particular office as well.</p> <p>23 MS. TABACCHI: Any other statements from 24 anyone?</p> <p>25 MR. HAVILAND: Have a nice day.</p>	<p>1 CHANGES AND SIGNATURE</p> <p>2 PAGE LINE CHANGE REASON</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 223	Page 225
<p>1 MR. BREEN: Yeah. Have a nice day and I 2 hope the weather gets better.</p> <p>3 THE VIDEOGRAPHER: This is the end of 4 Tape 4 in the deposition of Virginia Tobiason. Going 5 off the record. The time is now 4:21 p.m.</p> <p>6</p> <p>7 (Deposition closed at 4:21 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I, VIRGINIA TOBIASON, have read the foregoing 2 deposition and hereby affix my signature that same is 3 true and correct, except as noted above.</p> <p>4</p> <p>5</p> <p>6 VIRGINIA TOBIASON</p> <p>7</p> <p>8</p> <p>9 THE STATE OF) 10 COUNTY OF) 11 Before me, , on this day 12 personally appeared VIRGINIA TOBIASON, known to me (or 13 proved to me under oath or through 14) (description of identity 15 card or other document) to be the person whose name is 16 subscribed to the foregoing instrument and 17 acknowledged to me that they executed the same for the 18 purposes and consideration therein expressed. 19 Given under my hand and seal of office this 20 day of , 2007.</p> <p>21</p> <p>22</p> <p>23</p> <p>24 NOTARY PUBLIC IN AND FOR 25 THE STATE OF</p>

57 (Pages 222 to 225)

FREDERICKS-CARROLL REPORTING

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<p style="text-align: right;">Page 226</p> <p>1 NO. D-1-GV-04-001286 2 THE STATE OF TEXAS) IN THE DISTRICT COURT 3) 4 ex rel.) 5 VEN-A-CARE OF THE) 6 FLORIDA KEYS, INC.,) 7 Plaintiffs,) 8 VS.) TRAVIS COUNTY, TEXAS 9) 10 ABBOTT LABORATORIES INC.,) 11 ABBOTT LABORATORIES,) 12 HOSPIRA, INC., and B. BRAUN) 13 MEDICAL INC.,) 14 Defendant(s).) 201ST JUDICIAL DISTRICT 15 16 REPORTER'S CERTIFICATION 17 DEPOSITION OF VIRGINIA TOBIASON 18 March 28, 2007 19 I, Cynthia Vohlken, Certified Shorthand Reporter 20 in and for the State of Texas, hereby certify to the 21 following: 22 That the witness, VIRGINIA TOBIASON, was duly 23 sworn by the officer and that the transcript of the 24 oral deposition is a true record of the testimony 25 given by the witness; 26 That the deposition transcript was submitted on 27 April 2, 2007, to the witness or to the attorney for 28 the witness for examination, signature and return to 29 me by April 25, 2007; 30 That the amount of time used by each party at the 31 deposition is as follows: 32 Ms. Margaret Moore - 02:01</p>	<p style="text-align: right;">Page 228</p> <p>1 Certified to by me this 2nd day of April, 2007. 2 3 4 5 6 Cynthia Vohlken, Texas CSR 1059 7 Expiration Date: 12/31/2008 8 Firm Registration No. 82 9 Fredericks-Carroll Reporting 10 7719 Wood Hollow Drive, Suite 156 11 Austin, Texas 78731 12 Telephone: (512) 477-9911 13 (800) 234-3376 14 Fax: (512) 345-1417 15 16 JOB NO. 2272 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 227</p> <p>1 That pursuant to information given to the 2 deposition officer at the time said testimony was 3 taken, the following includes counsel for all parties 4 of record: 5 MS. MARGARET MOORE, Attorney for Plaintiff 6 State of Texas; 7 MR. JAMES JOSEPH BREEN, Attorney for the 8 Relator; 9 MS. TINA TABACCHI, Attorney for Defendants 10 Abbott Laboratories, Inc. and Hospira, Inc. 11 MS. ANN M. ST. PETER-GRIFFITH, Attorney for 12 Plaintiff United States of America 13 MS. AMBER M. NESBITT, Attorney for Plaintiff 14 State of Arizona and MDL Plaintiffs 15 MR. DONALD E. HAVILAND, JR., Attorney for 16 Plaintiff Commonwealth of Pennsylvania 17 18 I further certify that I am neither counsel for, 19 related to, nor employed by any of the parties or 20 attorneys in the action in which this proceeding was 21 taken, and further that I am not financially or 22 otherwise interested in the outcome of the action. 23 Further certification requirements pursuant to 24 Rule 203 of TRCP will be certified to after they have 25 occurred.</p>	<p style="text-align: right;">Page 229</p> <p>1 FURTHER CERTIFICATION UNDER RULE 203 TRCP 2 The original deposition was/was not returned to 3 the deposition officer on , 2007; 4 If returned, the attached Changes and Signature 5 page contains any changes and the reasons therefor; 6 If returned, the original deposition was delivered 7 to Ms. Margaret Moore, Custodial Attorney; 8 That \$ is the deposition officer's 9 charges to the Plaintiff(s) for preparing the original 10 deposition transcript and any copies of exhibits; 11 That the deposition was delivered in accordance 12 with Rule 203.3, and that a copy of this certificate 13 was served on all parties shown herein on and filed 14 with the Clerk. 15 Certified to by me this day of 16 , 2007. 17 18 19 20 Cynthia Vohlken, Texas CSR 1059 21 Expiration Date: 12/31/2008 22 Firm Registration No. 82 23 Fredericks-Carroll Reporting 24 7719 Wood Hollow Drive, Suite 156 25 Austin, Texas 78731 Telephone: (512) 477-9911 (800) 234-3376 Fax: (512) 345-1417 JOB NO. 2272</p>

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EXHIBIT 84

Tootell, Michael

October 25, 2007

Chicago, IL

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-----X

In re: PHARMACEUTICAL) MDL No. 1456

INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION

PRICE LITIGATION) No. 01-12257-PBS

-----X

VIDEOTAPED DEPOSITION OF MICHAEL TOOTELL

OCTOBER 25, 2007

CHICAGO, ILLINOIS

Videotaped Deposition of MICHAEL TOOTELL, at
71 South Wacker Drive, 32nd Floor, Chicago,
Illinois, commencing at 9:00 a.m. on Thursday,
October 25, 2007, before Donna M. Kazaitis, RPR,
CSR No. 084-003145.

Henderson Legal Services
202-220-4158

Tootell, Michael

October 25, 2007

Chicago, IL

<p style="text-align: right;">Page 78</p> <p>1 MR. WINCHESTER: Objection, form. 2 THE WITNESS: Can you ask the question 3 again? 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Sure. Let me see if I can rephrase it. 6 You indicated that there was a process 7 requiring multiple signatures for reporting 8 pricing to third-party compendia; right? 9 A. For setting list prices and the list 10 prices were reported to. 11 Q. And how is the process established for 12 setting list prices? 13 A. I was not part of that process. 14 Q. Who at Ross was responsible for that? 15 A. I listed the names of the signatories, 16 the positions that would be responsible for 17 setting the price. 18 Q. Do you recall who any of these 19 individuals were, like who the pricing head was? 20 MR. WINCHESTER: Objection. Timeframe? 21 THE WITNESS: Which timeframe? 22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Why would the list prices be reported 2 to the pricing compendia? 3 MR. WINCHESTER: Objection, form. 4 MR. FERGUSON: Same objection. 5 THE WITNESS: The policy of the 6 compendia was to request the highest published 7 price. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. How do you know that? 10 A. It was common knowledge. It was 11 specifically told to me by Kay Morgan, First 12 Databank vice president. 13 Q. So you had a conversation with Kay 14 Morgan concerning reporting the highest published 15 price to First Databank? 16 A. My conversation was about the policies 17 of the First Databank, which prices did they 18 want. Her instruction to me was to provide the 19 highest published price available to customers, a 20 price without volume discounts or associated 21 other discounting that surround. 22 Q. When did you have that conversation</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. At any time. 2 A. The problem is that those positions 3 were changing and people were changing. We've 4 had seven Ross presidents in the seventeen years 5 I was there. So many of the people have changed. 6 If you want any particular name, any 7 particular time, the most recent process would be 8 Kevin Garleb, who is director of contract 9 management, and then depending on which product, 10 the appropriate product manager, that would 11 differ depending upon which product. 12 Q. Was the director of contract, did you 13 say director of contract marketing? 14 A. Contract marketing. 15 Q. Would that be the pricing head? 16 A. He'd have responsibilities for that. I 17 believe his signature was required in that 18 process. 19 Q. What is a list price? 20 A. A list price is the price for one to 21 nine cases of product sold to customers who are 22 without a contract.</p>	<p style="text-align: right;">Page 81</p> <p>1 with her? 2 A. I don't recall. 3 Q. Do you recall any timeframe, what the 4 year might have been? 5 A. It was in the '90s. 6 Q. Did you memorialize this conversation 7 anywhere? 8 A. I don't believe so. 9 Q. What did you do with that information 10 that Kay Morgan gave to you? 11 A. I instructed the Pricing Department 12 that the First Databank policy was to ask 13 manufacturers to provide their undiscounted 14 price, the highest published price. And we 15 provided data consistent with the First Databank 16 request. 17 Q. Do you know whether that was the policy 18 for other pricing compendia? 19 A. I believe it was. 20 Q. What do you base that belief upon? 21 A. I don't have specific recollection of 22 how that happened.</p>

21 (Pages 78 to 81)

Tootell, Michael

October 25, 2007

Chicago, IL

<p style="text-align: right;">Page 294</p> <p>1 Q. Now.</p> <p>2 A. Now, and then I didn't. You used your</p> <p>3 calendar for your appointments, and I don't know</p> <p>4 what's happened to it after I left.</p> <p>5 Q. I know. I mean I realize that you</p> <p>6 don't know what's happened to it since you left.</p> <p>7 But I'm asking as of the day you left, it was</p> <p>8 your understanding that your calendar had been</p> <p>9 preserved in this electronic Lotus Notes</p> <p>10 software; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And so, for instance, if you wanted to</p> <p>13 go back and see what day you made the</p> <p>14 presentation to Cardinal, you could do so even</p> <p>15 though it would require you to go back to the</p> <p>16 summer of 2000?</p> <p>17 A. I really don't know how far back Lotus</p> <p>18 Notes goes in my desk, on my laptop on my desk.</p> <p>19 And I don't know how that's archived. But I do</p> <p>20 know that there were document orders, and I would</p> <p>21 expect it was archived in a place that's</p> <p>22 acceptable. But no, I do not know.</p>	<p style="text-align: right;">Page 296</p> <p>1 It's also been marked in this case as I believe</p> <p>2 Exhibit 551. (Document tendered to the witness.)</p> <p>3 MR. ANDERSON: Let's change tapes while</p> <p>4 the witness is reviewing the document.</p> <p>5 THE VIDEOGRAPHER: We are off the</p> <p>6 record at 4:44 with the end of Tape No. 4.</p> <p>7 (WHEREUPON a recess was taken.)</p> <p>8 THE VIDEOGRAPHER: We are back on the</p> <p>9 record at 4:49 p.m. with the start of Tape No. 5.</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. Sir, does Exhibit Tootell 009 appear to</p> <p>12 be the notes of a Medicare Working Group meeting</p> <p>13 that you attended?</p> <p>14 A. I don't recall it, but they appear to</p> <p>15 be.</p> <p>16 Q. Looking at the third page of the</p> <p>17 exhibit titled "Minutes for Medicare Working</p> <p>18 Group Meeting" on January 21, 1997, do you see a</p> <p>19 section entitled "Average Wholesale Price"?</p> <p>20 A. I do.</p> <p>21 Q. I'm going to read the first bullet</p> <p>22 point. Quote "Average wholesale price, AWP, is</p>
<p style="text-align: right;">Page 295</p> <p>1 Q. When you say "document orders," do you</p> <p>2 mean --</p> <p>3 A. Hold orders.</p> <p>4 Q. -- related to litigation or just</p> <p>5 typical holds?</p> <p>6 A. They would show up and you'd hold</p> <p>7 documents in a particular category.</p> <p>8 Q. Did you understand whether it pertained</p> <p>9 to litigation or not?</p> <p>10 A. The inquiries came from Abbott</p> <p>11 litigation. I assumed so.</p> <p>12 Q. What would you say the overall</p> <p>13 accomplishments were of the Medicare Working</p> <p>14 Group of which you were a member?</p> <p>15 A. I don't recall that. I'd have to</p> <p>16 refresh my mind even on the contents of those</p> <p>17 meetings.</p> <p>18 (WHEREUPON Deposition Exhibit</p> <p>19 Tootell 009 was marked as of 10/25/2007.)</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. Mr. Tootell, please take a moment and</p> <p>22 review what's been marked as Exhibit Tootell 009.</p>	<p style="text-align: right;">Page 297</p> <p>1 generally based upon the manufacturer's price</p> <p>2 plus a mark-up of fifteen to twenty percent. The</p> <p>3 AWP is documented in the Red Book, Blue Book, and</p> <p>4 Medi-Span book and is used by Medicare/Medicaid</p> <p>5 and commercial insurance carriers to determine</p> <p>6 reimbursement levels." Did I read that</p> <p>7 correctly?</p> <p>8 A. You read that accurately.</p> <p>9 Q. Is that a true statement?</p> <p>10 MR. WINCHESTER: Objection as to</p> <p>11 timeframe.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Back in 1997 was that a true statement?</p> <p>14 A. Yes.</p> <p>15 Q. Is there any question in your mind that</p> <p>16 all the members of the Abbott Medicare Working</p> <p>17 Group understood that issue in 1997?</p> <p>18 MR. FERGUSON: Object to form and</p> <p>19 foundation.</p> <p>20 MR. WINCHESTER: Objection to form.</p> <p>21 THE WITNESS: I can't speak for others,</p> <p>22 but I believe, I understood it this way.</p>

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Tootell, Michael

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1 MR. WINCHESTER: The same for Abbott as
2 well.

3 MR. SISNEROS: And on behalf of
4 California we have yet to take our turn to ask
5 our questions.

6 MR. ANDERSON: Let's go off the record.

7 THE VIDEOGRAPHER: We are off the
8 record at 5:07 p.m. with the conclusion of
9 today's deposition of Michael Tootell.

10 (WHEREUPON said deposition was so
11 adjourned.)

12
13

14 _____
15 MICHAEL TOOTELL

16
17 Subscribed and sworn to and before me
18 this _____ day of _____, 20____.

19
20

21 _____
22 Notary Public

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1 STATE OF ILLINOIS)
2 COUNTY OF C O O K)

3 I, Donna M. Kazaitis, RPR, CSR No.
4 084-003145, do hereby certify:

5 That the foregoing deposition of MICHAEL
6 TOOTELL was taken before me at the time and place
7 therein set forth, at which time the witness was
8 put under oath by me;

9 That the testimony of the witness and all
10 objections made at the time of the examination
11 were recorded stenographically by me, were
12 thereafter transcribed under my direction and
13 supervision and that the foregoing is a true
14 record of same.

15 I further certify that I am neither counsel
16 for nor related to any party to said action, nor
17 in any way interested in the outcome thereof.

18 IN WITNESS WHEREOF, I have subscribed my name
19 this 29th day of October, 2007.

20
21

22 _____
Donna M. Kazaitis, RPR, CSR 084-003145

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EXHIBIT 85

Wells, Jerry PORTIONS HIGHLY CONFIDENTIAL December 15, 2008
Tallahassee, FL

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
In Re: PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE LITIGATION) CIVIL ACTION:
-----X 01-CV-12257-PBS
THIS DOCUMENT RELATES TO:)
U.S. ex rel. Ven-A-Care of the) Judge Patti B.
Florida Keys, Inc., v. Abbott) Saris
Laboratories, Inc., No.)
06-CV-11337-PBS; U.S. ex rel.) Magistrate Judge
Ven-A-Care of the Florida Keys,) Marianne Bowler
Inc. v. Abbott Laboratories, Inc.,)
No. 07-CV-11618-PBS; U.S. ex rel.)
Ven-A-Care of the Florida Keys,) DEPOSITION OF
Inc. v. Dey, Inc., et al., No.) JERRY WELLS
05-11084-PBS; U.S. ex rel.)
Ven-A-Care of the Florida Keys,) DECMEBER 15, 2008
Inc., et al. v. Boehringer) TALLAHASSEE, FL
Ingelheim Corp., et al., No.)
07-10248-PBS)
-----X

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Wells, Jerry PORTIONS HIGHLY CONFIDENTIAL December 15, 2008
Tallahassee, FL

<p style="text-align: right;">Page 46</p> <p>1 A. No, that's not true. Waterford 2 irrigation is not necessarily injectable, but the 3 others are. 4 Q. Was it your understanding that the 5 federal upper limit program never had federal 6 upper limits for injectable drugs? 7 A. At least, initially, it did not address 8 injectable drugs. 9 Q. What's your basis for that 10 understanding? 11 A. That was their policy. They were 12 looking at controlling the cost the -- the 13 state's reimbursed for oral prescription drugs, 14 oral and topical. 15 MR. BREEN: Chris, just so the record's 16 clear, when you -- when you or the witness use 17 the term "injectable," are you also using that to 18 include drugs that are infused by gravity or by 19 pump versus an injection, like a shot? 20 MR. COOK: That would be my 21 understanding as well. 22 MR. BREEN: I just want to make sure</p>	<p style="text-align: right;">Page 48</p> <p>1 name. Larry Reid is still at the Healthcare 2 Financing, or CMS. I talked with him at some 3 length about that and with some other people 4 whose names I don't recall. That's many years 5 ago. 6 Q. How many years ago -- that is my next 7 question. Do you recall when it was that these 8 conversations took place? 9 A. The late '80s, early '90s, ongoing, 10 until I left state employment. 11 Q. Do you recall any specific 12 conversations that related to whether or not 13 injectable or infusion drugs, including those 14 listed on Pages 10 and 11 of Exhibit 1002, would 15 be included within the federal upper limit 16 program? 17 A. No. As I said, I think they excluded 18 them. It was not their intent to put federal 19 upper limit prices on those drugs. 20 Q. Do you know why it was that HCFA -- 21 strike that. 22 Were you ever told by anyone at HCFA</p>
<p style="text-align: right;">Page 47</p> <p>1 the witness is -- that you guys are talking about 2 the same thing. 3 BY MR. COOK: 4 Q. How are you aware of what federal 5 policy was with respect to establishing federal 6 upper limits? 7 A. They published it in the Code of 8 Federal Regulations, and I had a number of 9 conversations with staff at the Healthcare 10 Financing Administration. 11 Q. Which staff at the federal -- when you 12 say the Healthcare Financing Administration, 13 that's HCFA, correct? 14 A. That's HCFA, or what is now CMS. 15 Q. Who at HCFA did you speak to regarding 16 the scope of the federal upper limit program? 17 A. I remember some names. I don't 18 remember the name of the individual who developed 19 the first administrative rule for federal upper 20 limit pricing, but he was an ex-Merck employee 21 that had gone to work for the Healthcare 22 Financing Administering, but I don't recall his</p>	<p style="text-align: right;">Page 49</p> <p>1 why it was that HCFA intended to exclude 2 injection and infusion drugs from the federal 3 upper limit program? 4 MS. ST. PETE-GRIFFITH: Object to form. 5 THE WITNESS: I don't recall. 6 BY MR. COOK: 7 Q. From your conversations with Larry Reid 8 and others at HCFA, were you able to infer why it 9 was that the federal government excluded 10 injection and infusion drugs from the federal 11 upper limit program? 12 MS. WALLACE: Objection. 13 MS. ST. PETE-GRIFFITH: Objection. 14 THE WITNESS: I don't think that I was 15 ever satisfied or got a satisfactory answer for 16 my purposes or that issue, but I just don't 17 recall. That's many years ago. 18 BY MR. COOK: 19 Q. Did you seek a satisfactory answer? 20 MS. ST. PETE-GRIFFITH: Object to the 21 form. 22 THE WITNESS: I think we had some</p>

13 (Pages 46 to 49)

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Wells, Jerry PORTIONS HIGHLY CONFIDENTIAL December 15, 2008
Tallahassee, FL

<p style="text-align: right;">Page 50</p> <p>1 discussions about it because I felt like they 2 should, and they had some reasons that, as I 3 said, I don't think I was ever satisfied with, 4 but I don't even recall what their reasons were. 5 BY MR. COOK 6 Q. Do you recall expressing to individuals 7 at HCFA your belief that injection and infusion 8 drugs should be included within the federal upper 9 limit program? 10 MS. ST. PETE-GRIFFITH: Object to the 11 form. 12 THE WITNESS: I don't think it was 13 specific to injectable drugs. They -- they chose 14 not to put federal upper limit prices on a number 15 of drugs that I felt like they should have; over- 16 the-counter products that sometimes we 17 reimbursed, for instance. I felt like it should 18 be a more expansive program, and I felt like they 19 should update it more frequently than they 20 planned to update it. 21 BY MR. COOK: 22 Q. What was the context in which you</p>	<p style="text-align: right;">Page 52</p> <p>1 upper limit program, can you give me a time range 2 in which these conversations, specifically with 3 respect to what should and should not be in the 4 federal upper limit program, took place? 5 MS. ST. PETE-GRIFFITH: Object to the 6 form. 7 THE WITNESS: I would think that that 8 started about 1987 and continued until I left. 9 BY MR. COOK: 10 Q. Why did you urge the federal government 11 to expand the federal upper limit program beyond 12 simply oral and topical prescriptions? 13 MS. ST. PETE-GRIFFITH: Object to form. 14 MS. WALLACE: Objection. 15 THE WITNESS: Because we did not have 16 staff at Florida Medicaid, and I felt like most 17 other states did not have the staff and the 18 expertise to gather all the necessary data and 19 establish those pricing restrictions, and I felt 20 like it should be the federal government's 21 responsibility to do it centrally rather than 22 have fifty individual efforts out there trying to</p>
<p style="text-align: right;">Page 51</p> <p>1 expressed these beliefs to representatives of 2 HCFA? 3 MS. ST. PETE-GRIFFITH: Object to the 4 form. 5 THE WITNESS: I don't understand your 6 question. 7 BY MR. COOK: 8 Q. Sure. Were these one-on-one telephone 9 conversations or were they group meetings in 10 which you expressed these beliefs? 11 A. I probably would say both. 12 Q. Would it also have included in-person 13 meetings with individuals from HCFA? 14 MS. ST. PETE-GRIFFITH: Object to the 15 form. 16 THE WITNESS: That would have been 17 group meetings, and several of us met with HCFA 18 staff in Atlanta and Washington on a number of 19 these issues. 20 BY MR. COOK: 21 Q. Although you can't put a specific date 22 on the conversations relating to the federal</p>	<p style="text-align: right;">Page 53</p> <p>1 do it. 2 BY MR. COOK: 3 Q. In your experience, did the federal 4 upper limit program work as an effective cost 5 containment measure for oral and topical 6 prescriptions? 7 MS. ST. PETE-GRIFFITH: Object to the 8 form. 9 THE WITNESS: I felt like there was 10 some deficiencies in the program related to the 11 inability to get it updated in a timely manner. 12 BY MR. COOK: 13 Q. Other than your belief that the 14 updating may not have been as quick as it could 15 have been, were there any other deficiencies in 16 the federal upper limit program -- 17 A. I had some -- 18 Q. -- that is, relating to oral and 19 topical? 20 A. I had some personal reservations about 21 the way it was designed, but it was effective in 22 controlling or setting a ceiling on the</p>

14 (Pages 50 to 53)

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Wells, Jerry PORTIONS HIGHLY CONFIDENTIAL December 15, 2008
Tallahassee, FL

<p style="text-align: right;">Page 54</p> <p>1 reimbursement for some of those drugs. 2 Q. Other than the resource issue of HCFA 3 having more resources than the states, did you 4 have a belief as to why it would be good policy 5 for the federal upper limit program to be 6 extended to drugs such as those contained or 7 listed in Exhibit 1002? 8 MS. ST. PETE-GRIFFITH: Object to the 9 form. 10 MS. WALLACE: Objection. 11 THE WITNESS: You're going to have to 12 restate that. 13 BY MR. COOK: 14 Q. Sure. What was the purpose of the 15 federal upper limit program as you understood it 16 back in the 1980s? 17 MS. ST. PETE-GRIFFITH: Object to the 18 form. 19 THE WITNESS: The purpose was to 20 contain costs that prescription drug -- various 21 state prescription drug programs spent buying 22 generic prescription drugs.</p>	<p style="text-align: right;">Page 56</p> <p>1 drug program. I don't recall the answer. 2 Obviously, it didn't stick in my mind or I'd tell 3 you what it was. 4 BY MR. COOK: 5 Q. And to be clear, the -- your inability 6 to testify about why it was that HCFA told you is 7 a function of the passage of time, correct? 8 MS. ST. PETE-GRIFFITH: Object to the 9 form. 10 MS. WALLACE: Objection. 11 THE WITNESS: Yeah, I think the 12 function of the passage of time, and it wasn't -- 13 apparently, wasn't satisfactory enough to stick. 14 BY MR. COOK: 15 Q. Was one purpose for Florida 16 establishing its own state MAC to make up for the 17 shortcomings of the federal upper limit program? 18 MS. ST. PETE-GRIFFITH: Object to the 19 form. 20 MS. WALLACE: Objection. 21 THE WITNESS: Specifically, I wanted to 22 have the ability to do a more timely update to be</p>
<p style="text-align: right;">Page 55</p> <p>1 BY MR. COOK: 2 Q. And did you understand that there was a 3 need to contain costs relating to generic drugs 4 beyond simply oral and topical prescriptions in 5 the 1980s? 6 A. I felt like if you're going to have a 7 cost control program, you ought to make it 8 applicable to everything you reimburse, not just 9 isolate the oral tablets and capsules and 10 topicals. 11 Q. You indicated that you never got a 12 satisfactory answer from HCFA. Did you ever get 13 any answer from someone at HCFA as to why the 14 federal upper limit program was not expanded to 15 include injection and infusion products? 16 MS. WALLACE: Objection. 17 MS. ST. PETE-GRIFFITH: Object to the 18 form. 19 THE WITNESS: I may have. These were 20 philosophical discussions, and we had lots of 21 differences of opinion about what ought to and 22 ought not to be done in managing the prescription</p>	<p style="text-align: right;">Page 57</p> <p>1 able to track the commodities nature of the 2 prescription drug generic market and to allow us 3 more flexibility in applying those cost controls 4 to additional products than that very narrow list 5 that the feds were using. 6 BY MR. COOK: 7 Q. How did you go about establishing state 8 MACs once the program was authorized by the 9 Florida legislature? 10 A. Actually, it wasn't authorized by the 11 Florida legislature initially. We put it in the 12 administrative rule as part of our reimbursement 13 logic. 14 Q. About when was that? 15 A. I think that was in the early '90s when 16 I first came back to Medicaid. 17 MS. WALLACE: Mr. Cook, I just, again, 18 want to reiterate, this has been covered quite 19 extensively in his prior transcripts. 20 MR. COOK: All right. 21 BY MR. COOK: 22 Q. How did you go about setting state MACs</p>

15 (Pages 54 to 57)

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<p style="text-align: right;">Page 122</p> <p>1 A. I don't know that I had.</p> <p>2 Q. Do you recall reading this newspaper</p> <p>3 article after it came out with -- with you being</p> <p>4 quoted in it?</p> <p>5 A. I don't. I do not.</p> <p>6 Q. You will agree with me that the</p> <p>7 difference between acquisition cost and average</p> <p>8 wholesale price was the reason that you urged</p> <p>9 HCFA not to use average wholesale price as a</p> <p>10 pricing mechanism, correct?</p> <p>11 MS. ST. PETE-GRIFFITH: Object to the</p> <p>12 form.</p> <p>13 MS. WALLACE: Objection, form.</p> <p>14 THE WITNESS: The reason we encouraged</p> <p>15 them to allow us to use a WAC plus reimbursement</p> <p>16 basis was because I felt like AWP was being</p> <p>17 manipulated.</p> <p>18 BY MR. COOK:</p> <p>19 Q. And you had that belief back in 1987,</p> <p>20 correct?</p> <p>21 A. I did.</p> <p>22 MS. ST. PETE-GRIFFITH: Object to form.</p>	<p style="text-align: right;">Page 124</p> <p>1 marked as Exhibit 1006. It is -- for the record,</p> <p>2 it is a document entitled Legislative Proposal</p> <p>3 Analysis dated October 1, 1998. Do you recognize</p> <p>4 this document?</p> <p>5 A. I think I do.</p> <p>6 Q. You are listed as the contact name on</p> <p>7 this Legislative Proposal Analysis. Do you see</p> <p>8 that?</p> <p>9 A. I do.</p> <p>10 Q. Is it fair to assume that you probably</p> <p>11 wrote this Legislative Proposal Analysis?</p> <p>12 A. I had something to do with writing it.</p> <p>13 Q. What's the subject matter of this</p> <p>14 Legislative Proposal Analysis?</p> <p>15 A. This is parenteral and enteral</p> <p>16 pharmacies. It was, I think, drafted after or</p> <p>17 before a meeting with parenteral and enteral</p> <p>18 pharmacies and some legislators.</p> <p>19 Q. Was Ven-a-Care included in that</p> <p>20 meeting?</p> <p>21 A. I don't know that for sure. I think</p> <p>22 they were. They probably were. Should have</p>
<p style="text-align: right;">Page 123</p> <p>1 BY MR. COOK:</p> <p>2 Q. And you communicated that to HCFA back</p> <p>3 in the 1980s, correct?</p> <p>4 MS. ST. PETE-GRIFFITH: Object to the</p> <p>5 form.</p> <p>6 THE WITNESS: I did.</p> <p>7 MR. COOK: This is a good time for a</p> <p>8 break.</p> <p>9 THE VIDEOGRAPHER: The time is 11:27</p> <p>10 a.m. We are going off the record.</p> <p>11 We are off the record.</p> <p>12 (Thereupon, a recess was taken,</p> <p>13 commencing at 11:27 a.m. and concluding at 11:37</p> <p>14 a.m. of the same day.)</p> <p>15 THE VIDEOGRAPHER: This is the</p> <p>16 beginning of Tape 3 of the videotaped deposition</p> <p>17 of Jerry Wells taken on December 15, 2008. The</p> <p>18 time is 11:37 a.m. and we are back on the record.</p> <p>19 (Exhibit Abbott-Wells 1006 was</p> <p>20 marked for identification.)</p> <p>21 BY MR. COOK:</p> <p>22 Q. Mr. Wells, I've handed you what we have</p>	<p style="text-align: right;">Page 125</p> <p>1 been.</p> <p>2 Q. Why were these pharmacies and</p> <p>3 legislators and you meeting together in 1998?</p> <p>4 A. This was a discussion meeting to</p> <p>5 establish reimbursement level for parenteral</p> <p>6 nutrition and to entertain the idea of</p> <p>7 establishing a new provider type in the pharmacy</p> <p>8 program, which would be a parenteral or IV</p> <p>9 provider to address some of the issues that</p> <p>10 didn't fit the square peg into the round hole of</p> <p>11 community pharmacy.</p> <p>12 Q. What are some of the issues that you're</p> <p>13 referring to there when you talk about these</p> <p>14 square peg/round hole problems between infusion</p> <p>15 pharmacies and community pharmacies?</p> <p>16 A. Infusion pharmacies were involved in</p> <p>17 preparation of sterile product for injectible</p> <p>18 use, which is a little more involved than putting</p> <p>19 prescription tablets or capsules into a vial and</p> <p>20 dispensing in the community environment. There</p> <p>21 were some issues with disposal supplies that</p> <p>22 providers would like to be reimbursed for that we</p>

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<p style="text-align: right;">Page 126</p> <p>1 had no provision to reimburse them for. 2 (Exhibit Abbott-Wells 1007 was 3 marked for identification.) 4 BY MR. COOK: 5 Q. Let me hand you, in conjunction with 6 the document you are looking at, we will look at 7 them both at the same time, Exhibit 1007. And 8 for the record, Exhibit 1007 is an August 24, 9 1990 letter from Zachary Bentley at Ven-a-Care to 10 you. Do you recall this letter? 11 A. I don't recall this letter, but I've 12 seen a copy of it before. I don't recall when it 13 came to my office. 14 Q. Does this refresh your memory -- let me 15 strike that. 16 Am I correct that this letter discusses 17 the square peg/round hole issues that you were 18 referring to about certain ancillary costs not 19 being covered by Medicaid for infusion 20 pharmacies? 21 MS. ST. PETER-GRIFFITH: Object to the 22 form.</p>	<p style="text-align: right;">Page 128</p> <p>1 BY MR. COOK: 2 Q. Okay. So let me retract that. 3 This letter refers to, first, a 4 telephone conversation with Zac Bentley, correct? 5 A. That's what the letter says. I don't 6 recall -- 7 Q. And then the -- 8 A. -- the conversation. 9 Q. And then in the fourth paragraph, it 10 refers to conversations you had had with Luis, 11 who owns a retail pharmacy, right? 12 MS. WALLACE: Objection to form. 13 THE WITNESS: And I think that was also 14 a phone conversation or it may have been a face- 15 to-face at a pharmacy meeting somewhere. 16 BY MR. COOK: 17 Q. I think you probably already answered 18 this question, but do you recall the conversation 19 with either Mr. Bentley or Mr. Cobo? 20 A. No. 21 Q. Okay. Do you recall receiving this 22 letter?</p>
<p style="text-align: right;">Page 127</p> <p>1 MS. WALLACE: Objection to form. 2 THE WITNESS: This letter addresses 3 some of those issues. If you'll give me a minute 4 to read the letter, because I think I've been 5 presented this letter before in depositions, but 6 I've not ever had a chance to read it because I 7 left Medicaid about the time that this letter 8 came, so I suspect Susan McCleod got this letter. 9 BY MR. COOK: 10 Q. Got it. If you could take your time 11 and read it, please. 12 A. (Reading document). 13 Okay. 14 Q. This letter describes a meeting that 15 you had with Luis Cobo and a telephone call that 16 you had with Zac Bennett, correct? 17 MS. ST. PETER-GRIFFITH: Object to the 18 form. 19 MS. WALLACE: Objection to form. 20 THE WITNESS: I think this letter 21 describes a phone conversation. I don't think I 22 had met with them.</p>	<p style="text-align: right;">Page 129</p> <p>1 A. I don't think I got this letter. I 2 think this letter came as I was going out the 3 door and so I never saw it. 4 Q. Do you recall infusion pharmacies -- 5 well, let me back up one step. 6 Is it your understanding that Ven-a- 7 Care of the Florida Keys was an infusion 8 pharmacy? 9 A. Yes. 10 Q. Do you recall infusion pharmacies in 11 the 1990 time period coming to you in your 12 position with Florida Medicaid and asking that 13 ancillary supplies and pumps for the 14 administration of IV medication be added to 15 Florida Medicaid benefits? 16 A. I had discussions with a number of 17 parenteral pharmacy vendors. I don't recall this 18 specific discussion. 19 Q. What do you recall about those 20 conversations with home infusion vendors in the 21 1990 time period? 22 A. They were desirous of having infusion</p>

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<p style="text-align: right;">Page 130</p> <p>1 supplies, tubing, IV sets, butterflies, and that 2 sort of thing, added as a reimbursable item under 3 the prescription drug program, and because those 4 products frequently did not have a national drug 5 code, we didn't have any way to pay for them, and 6 the DME, durable medical equipment supply 7 program, would not pay for those by policy for 8 patients that were over the age of 21. 9 Q. In this letter, Mr. Bentley states in 10 the first paragraph, quote, "I do not feel the 11 profits being generated by home infusion 12 pharmacies from the IV medications are 13 correlative, nor should they be viewed as any 14 potential offset for the cost provisions of the 15 supplies." 16 Do you see that? 17 A. I see that. 18 Q. Do you recall there being discussion 19 that profits being generated from IV medications 20 were acting as an offset for the provision of 21 supplies, such as pumps and tubing? 22 MS. ST. PETER-GRIFFITH: Object to the</p>	<p style="text-align: right;">Page 132</p> <p>1 pharmacies, right? 2 A. It would not have, no. 3 Q. And so while you didn't know the 4 precise size of the margin on the drug ingredient 5 reimbursement for home infusion pharmacies as of 6 1990, were you aware that to some degree those 7 home infusion pharmacies were using profits on 8 the drug ingredient side to offset additional 9 costs in the dispensing of IV drugs? 10 MS. ST. PETER-GRIFFITH: Object to the 11 form. 12 MS. WALLACE: Objection to form. 13 MR. BREEN: Objection to form. 14 THE WITNESS: I had been told that by 15 two or three of those providers. 16 BY MR. COOK: 17 Q. Did you believe them? 18 MS. ST. PETER-GRIFFITH: Object to 19 form. 20 MS. WALLACE: Objection to form. 21 THE WITNESS: I had no reason not to 22 believe them. I felt like they were being honest</p>
<p style="text-align: right;">Page 131</p> <p>1 form. 2 MS. WALLACE: Objection to form. 3 THE WITNESS: I don't know that I was 4 that involved with that at this time. I know 5 that when I came back to Medicaid we had some of 6 those discussions. I think that this was 7 probably right at the tail end of my time at 8 Medicaid and we didn't have a lot of those 9 discussions. I knew that there was some margin 10 greater than we anticipated on fluids. I didn't 11 know how much. 12 BY MR. COOK: 13 Q. Okay. Because the dispensing fee to 14 infusion pharmacies in 1990 was \$4.23, correct? 15 MS. ST. PETER-GRIFFITH: Object to 16 form. 17 THE WITNESS: The dispensing fee was 18 the same for all pharmacies in 1990 with the 19 exception of I think we had by that time the unit 20 dose packaging differential that we offered. 21 BY MR. COOK: 22 Q. And that didn't help infusion</p>	<p style="text-align: right;">Page 133</p> <p>1 and... 2 BY MR. COOK: 3 Q. And you would agree with me that it 4 makes logical sense that these IV pharmacies had 5 to be making up these additional costs somewhere, 6 correct? 7 MS. ST. PETER-GRIFFITH: Object to the 8 form. 9 MS. WALLACE: Objection to form. 10 THE WITNESS: I don't think it's -- it 11 was not in our policy that that be happening, and 12 it was my desire that we address actual costs. 13 BY MR. COOK: 14 Q. Right. And that's what's reflected in 15 the October 1, 1998 Legislative Proposal 16 Analysis, correct? 17 MS. WALLACE: Object to the form. 18 THE WITNESS: That -- 19 MS. ST. PETER-GRIFFITH: Objection to 20 form. 21 THE WITNESS: That would be correct. 22 BY MR. COOK:</p>

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2 preferred drug list and prior authorization
3 program on branded products than we would have
4 achieved savings-wise by micromanaging a few
5 generic products, although there were some
6 savings possibly to be had there as well.
7 Q. What I'm trying to understand again
8 also is when you -- when you testified that you
9 thought you could do a better job, was that -- do
10 you feel -- were you referring specifically to
11 any branded drugs?
12 A. I don't think so. Most of the branded
13 products I felt like our reimbursement was pretty
14 reasonably accurate.
15 Q. Okay.
16 MR. YOUNG: That's all I have. Thank
17 you very much.
18 THE WITNESS: Thank you.
19 MS. WALLACE: Thank you.
20 THE VIDEOGRAPHER: This is the end of
21 the videotaped deposition of Jerry Wells taken on
22 December 15, 2008. The time is 4:43 p.m. and we

812a0173-a18d-4a8c-ab7c-e36f57f53cf3

Wells, Jerry PORTIONS HIGHLY CONFIDENTIAL December 15, 2008
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1 CERTIFICATE OF OATH
2 STATE OF FLORIDA)
3 COUNTY OF DUVAL)
4

5 I, the undersigned authority, certify that Jerry
6 Wells personally appeared before me and was duly sworn.
7 WITNESS my hand and official seal this 24th day of
8 December 2008.
9

10
11 _____
12 Barbara J. Memory
13 Notary Public - State of Florida
14 My Commission No. DD467680
15 Expires: August 31, 2009
16
17
18
19
20
21
22

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EXHIBIT 86

Young, Diana PORTIONS HIGHLY CONFIDENTIAL March 28, 2008
Detroit, MI

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
IN RE PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION,) Civil Action No
THIS DOCUMENT RELATES TO:) 01-12257-PBS
United States of America,) Judge Patti B.
ex rel. Ven-A-Care of the) Saris
Florida Keys, Inc., v.) Mag. Judge
Abbott Laboratories Inc.) Marianne Bowler
Civil Action No.)
06-11337-PBS)
-----X

(cross-captions on following pages)

PORTIONS DESIGNATED HIGHLY CONFIDENTIAL
The Videotape Deposition of DIANA YOUNG,
Taken at 400 Renaissance Center,
Detroit, Michigan,
Commencing at 9:16 a.m.,
Friday, March 28, 2008,
Before Gay Ann Nosek, CSR 2515.

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Young, Diana PORTIONS HIGHLY CONFIDENTIAL March 28, 2008
Detroit, MI

<p style="text-align: right;">Page 66</p> <p>1 Michigan, some of my customers have their own 2 GPO. 3 Q. Okay. Novation is the only one you 4 remember? 5 A. Yes. 6 Q. Were any of your customers members of 7 Gerimed (phonetic)? 8 A. I don't believe so. 9 Q. IV Med? 10 A. I don't believe so. 11 Q. RX Med? 12 A. RX Med? 13 Q. Um-hmm (affirmatively). 14 A. No. 15 Q. PBI? 16 A. Yes. 17 Q. MHA? 18 A. I don't think so. 19 (Exhibit Young 007 WAS MARKED BY 20 MS. DAVIS FOR IDENTIFICATION.) 21 BY MS. DAVIS: 22 Q. Take a look at what is being marked as</p>	<p style="text-align: right;">Page 68</p> <p>1 wholesale price, AWP, or on reimbursement. And 2 then it says if you go down to the next 3 paragraph, financial data compared include: AWP, 4 MAC, reimbursement, cost, and spread. 5 Were you aware that some of the GPO's 6 decided which products to use based on an 7 analysis of the spread between AWP and the cost 8 from a company? 9 A. No. 10 Q. Never knew that? 11 A. I did not know that. 12 Q. Did you ever see documents like this 13 from companies -- from GPO's? 14 A. No. 15 Q. Did you ever have customers whose GPO 16 was Chartwell? 17 A. Yes. 18 (Exhibit Young 008 WAS MARKED BY 19 MS. DAVIS FOR IDENTIFICATION.) 20 BY MS. DAVIS: 21 Q. I'll have you take a look at what is 22 being marked as Exhibit 8. This is -- the</p>
<p style="text-align: right;">Page 67</p> <p>1 Exhibit 7. I'm going to use the MHA number down 2 in the corner. Do you see that? 3 A. Um-hmm (affirmatively). 4 Q. And it's 30507. 5 MR. SCANNAPIECO: I'm sorry, my hearing 6 is a little off. Is it 30507? 7 MS. DAVIS: Yeah. 8 MR. SCANNAPIECO: Okay. Thank you. 9 THE WITNESS: Okay. 10 BY MS. DAVIS: 11 Q. This -- the document is titled 12 Questionnaire Group Purchasing Organization, and 13 it appears to have been created by MHA which is a 14 group purchasing organization. 15 A. Okay. 16 Q. If you take a look at paragraph 11 17 there. 18 A. Um-hmm (affirmatively), yes. 19 Q. Where it says Therapeutic Class 20 Financial Analysis and it asks for information 21 from a company submitting an RFI for information 22 to compare spread based on either the average</p>	<p style="text-align: right;">Page 69</p> <p>1 document is titled Pharmaceutical Buyers, Inc. 2 We talked earlier about PBI. Is that PBI? 3 A. Yes. 4 Q. You said you had customers who were a 5 member of this GPO? 6 A. Correct. 7 Q. Have you ever seen documents like this? 8 A. Not specifically like this. 9 Q. Have you seen documents with this kind 10 of information on them? 11 MR. SCANNAPIECO: Object to form. 12 THE WITNESS: Not like this. 13 BY MS. DAVIS: 14 Q. Okay. Just take a look at -- this 15 appears to be a price list to me. And if you 16 look at the last column on just any page -- the 17 last column it says PBI contract? 18 A. Yes. 19 Q. And it says what looks to be a price 20 underneath it? 21 A. Yes. 22 Q. And it has AWP next to that?</p>

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Young, Diana PORTIONS HIGHLY CONFIDENTIAL March 28, 2008
 Detroit, MI

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SIGNATURE OF THE WITNESS

DIANA YOUNG

SUBSCRIBED AND SWORN to before me this

_____ day of _____, 2008.

Notary Public

My Commission expires: _____

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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF OAKLAND)

I, Gay Ann Nosek, Certified Shorthand Reporter, a
 Notary Public in and for the above county and state, do
 hereby certify that the above deposition was taken
 before me at the time and place hereinbefore set forth;
 that the witness was by me first duly sworn to testify
 to the truth, and nothing but the truth, that the
 foregoing questions asked and answers made by the
 witness were duly recorded by me stenographically and
 reduced to computer transcription; that this is a true,
 full and correct transcript of my stenographic notes so
 taken; and that I am not related to, nor of counsel to
 either party nor interested in the event of this cause.

Gay Ann Nosek CSR 2515

Notary Public,

Oakland County, Michigan

My Commission expires: 02-11-13

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EXHIBIT 87

Vladeck, Ph.D., Bruce C.
New York, NY

May 4, 2007

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X MDL NO. 1456
IN RE: PHARMACEUTICAL INDUSTRY : CIVIL ACTION:
AVERAGE WHOLESALE PRICE LITIGATION : 01-CV-12257-PBS

-----X
THIS DOCUMENT RELATES TO: :
U.S. ex rel. Ven-A-Care of the : CIVIL ACTION:
Florida Keys, Inc. v. Abbott : 06-CV-11337-PBS
Laboratories, Inc. :
-----X

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

-----X
STATE OF ALABAMA, : CASE NO.
Plaintiff, : CV-05-219
v. :
ABBOTT LABORATORIES, INC., : JUDGE
et al., : CHARLES PRICE
Defendants. :
-----X

Henderson Legal Services
202-220-4158

Vladeck, Ph.D., Bruce C.

May 4, 2007

New York, NY

<p style="text-align: right;">Page 142</p> <p>1 Q. And for a brand name drug, would you --</p> <p>2 at the time, did you expect that there would be</p> <p>3 much variation between various purchasers based</p> <p>4 upon volume purchases of the brand name drug?</p> <p>5 A. I believe we had a perception that the</p> <p>6 bigger the purchaser, the larger the discount</p> <p>7 they were likely to be able to achieve; that the</p> <p>8 very largest pharmacy chains, for instance, or</p> <p>9 hospital group purchasing operations, probably</p> <p>10 received the most favorable prices, but that that</p> <p>11 would be -- and that some small independent</p> <p>12 pharmacies might actually pay average wholesale</p> <p>13 price as described in the compendia; that there</p> <p>14 would be a range below that in which most of the</p> <p>15 prices would actually occur.</p> <p>16 Q. Turning to generic drugs for a minute,</p> <p>17 what do you understand to be the differences</p> <p>18 between the market for brand name drugs and the</p> <p>19 market for generic drugs?</p> <p>20 MS. BROOKER: Objection. Form.</p> <p>21 A. If we're going back to 1997 --</p> <p>22 Q. Correct.</p>	<p style="text-align: right;">Page 144</p> <p>1 get much more commoditized in a bag of salt water</p> <p>2 in the drug market?</p> <p>3 A. The only quibble I would provide to</p> <p>4 that question is I never really thought of it as</p> <p>5 classically being part of the pharmaceutical</p> <p>6 market. It was such a -- it was really a</p> <p>7 hospital supply kind of market. It was such a</p> <p>8 standard product that even though it was FDA</p> <p>9 regulated and -- and sterility issues were so</p> <p>10 forth, it tended to be -- hospitals tend to stock</p> <p>11 it, for example, in sterile supplies, put it on</p> <p>12 their cost report as part of sterile supplies</p> <p>13 rather than through their pharmacies.</p> <p>14 Q. But a home infusion provider reimbursed</p> <p>15 under Part B, for example, might be reimbursed</p> <p>16 for sodium saline solution.</p> <p>17 Was that your understanding in '97?</p> <p>18 MS. BROOKER: Objection. Form.</p> <p>19 A. Yes, but whether that was as a supply</p> <p>20 or a drug, I honestly couldn't tell you. I would</p> <p>21 have thought of it as a supply.</p> <p>22 Q. Turning to the market of it, whether we</p>
<p style="text-align: right;">Page 143</p> <p>1 A. -- I think it's fair to say that I had</p> <p>2 really only a very limited understanding of the</p> <p>3 marketplace for generic drugs and an even more</p> <p>4 limited understanding of the difference between</p> <p>5 the market for generic drugs and for brand drugs.</p> <p>6 And, again, my perception at the time</p> <p>7 was that that was likely more like a commodity</p> <p>8 market in which there was probably more</p> <p>9 purchasing power on the part of the large</p> <p>10 purchasers, but not the same ability to raise</p> <p>11 prices on the up-side to small purchasers that</p> <p>12 prevailed on the brand name side.</p> <p>13 Q. I'd like to focus you just for a</p> <p>14 minute, before we turn to a specific document,</p> <p>15 about a particular generic drug. I think you</p> <p>16 mentioned commodities. Are you familiar with</p> <p>17 sodium saline solution?</p> <p>18 A. Yes.</p> <p>19 Q. It's a bag of salt water, essentially.</p> <p>20 Correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Would you agree with me that you can't</p>	<p style="text-align: right;">Page 145</p> <p>1 call it a drug or -- or a supply, did you have an</p> <p>2 understanding, in 1997, of what the market would</p> <p>3 look like for a product such as sodium saline</p> <p>4 solution?</p> <p>5 MS. BROOKER: Objection. Form.</p> <p>6 MR. BREEN: Objection. Form.</p> <p>7 A. Yes, I did.</p> <p>8 Q. And what was your understanding?</p> <p>9 A. Well, I actually -- in the 1980s, I</p> <p>10 believe, when I was first becoming involved in</p> <p>11 some of these issues in health care economics was</p> <p>12 the first development of hospital group</p> <p>13 purchasing operations, and I recall -- and the</p> <p>14 first widespread circulation of the -- of "Modern</p> <p>15 Healthcare," the magazine, and I recall monthly</p> <p>16 headlines in "Modern Healthcare" about group</p> <p>17 purchasing operations being -- achieving</p> <p>18 discounts of 98 and 99 percent in their purchase</p> <p>19 of basic infusion products and sterile supplies.</p> <p>20 So, my perception was that on the</p> <p>21 supply market, which, again, I understood and</p> <p>22 still would contend is actually a separate market</p>

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Vladeck, Ph.D., Bruce C.

May 4, 2007

New York, NY

<p style="text-align: right;">Page 146</p> <p>1 from the pharmaceutical market that list prices, 2 are essentially entirely meaningless and that 3 only the weakest and smallest scale buyers pay 4 anything close to it. 5 Q. And so, as of 1993, for example, would 6 you be surprised if a single bag of sodium saline 7 solution sold to a provider who bought maybe five 8 would pay \$10 per bag, and a large purchaser who 9 bought a very large volume would pay less than a 10 dollar? 11 MS. BROOKER: Objection. Form. 12 A. I would not have been surprised. 13 Q. Okay. So, to that extent that -- 14 President Clinton referring to a 10-to-1 ratio is 15 something that would be consistent with your 16 understanding of that particular market. 17 Correct? 18 MS. BROOKER: Objection. Form. 19 Q. I'm sorry. You have to verbalize. 20 A. Again, I would have thought that market 21 was a subset of the supplies market rather than 22 the drug market.</p>	<p style="text-align: right;">Page 148</p> <p>1 A. That would be a question I never 2 thought about before today. But today I would 3 say that we always made the distinction between - 4 - between drugs and -- and supplies. And, again, 5 I would fall back on the Medicare green eyeshade 6 distinction between what's sterile supplies and 7 what's pharmacy. 8 MR. COOK: Let's take a break. 9 THE VIDEOGRAPHER: The time is 11:28 10 a.m. We're going off the record, concluding Tape 11 No. 2 in the deposition of Dr. Bruce Vladeck in 12 the matter of In re Pharmaceutical Average 13 Wholesale Price Litigation. 14 (Recess taken.) 15 THE VIDEOGRAPHER: The time is 11:46 16 a.m. We're going back on the record, starting 17 Tape No. 3 of the deposition of Dr. Bruce Vladeck 18 in the matter of In re Pharmaceutical Average 19 Wholesale Price Litigation. 20 Q. Doctor, based upon what we were talking 21 about just before the break, would it be fair to 22 say that while you were administrator of HCFA,</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. That was my question. But you would 2 have distinguished between the drug market, where 3 10-to-1 would not -- you would not expect to see. 4 Correct? 5 A. That's correct. 6 Q. And the supply market, where sodium 7 saline solution would be found, where there could 8 be a huge variation between a small purchaser 9 purchasing at list price and a very large 10 purchaser purchasing at 99 percent off of list 11 price? 12 MS. BROOKER: Objection. Form. 13 A. I would have made such a distinction, 14 and I would not have been surprised to see those 15 sorts of differentials of the supply market. 16 Q. And in between the commodities supply 17 market of sodium saline and the patent-protected 18 market of a brand name drug, would you expect 19 generic drugs to be somewhere between those two 20 extremes? 21 MS. BROOKER: Objection. Form. 22 MR. BREEN: Objection. Form.</p>	<p style="text-align: right;">Page 149</p> <p>1 you did not understand published average 2 wholesale price to be the average of prices at 3 which wholesalers were selling their drugs to 4 their customers? 5 A. It would -- it would be fair to say 6 that I did not believe it was, in fact, an 7 empirical estimate, that rather it was a -- an 8 amount reported by the manufacturer to -- of the 9 compendium compilers or whatever, yes. 10 Q. And, again, akin to a sticker price? 11 A. That's correct. 12 Q. Where did you get that understanding? 13 A. I believe that was probably what my 14 staff explained to me when I first encountered 15 the concept sometime after I took office. 16 Q. Do you recall anybody within HCFA who 17 was under the belief that average wholesale price 18 was an average of prices at which wholesalers 19 sold drugs to customers? 20 MS. BROOKER: Object to form. And I 21 would just instruct the witness, just, you know, 22 be mindful of not disclosing deliberations,</p>

38 (Pages 146 to 149)

Vladeck, Ph.D., Bruce C.

May 4, 2007

New York, NY

<p style="text-align: right;">Page 282</p> <p>1 THE WITNESS: I appreciate your</p> <p>2 indulgence relative to that.</p> <p>3 MR. COOK: And I think we are off the</p> <p>4 record.</p> <p>5 THE VIDEOGRAPHER: The time is 4:02</p> <p>6 p.m. We're going off the record, concluding Tape</p> <p>7 No. 5 in this day's testimony in the deposition</p> <p>8 of Dr. Bruce Vladeck in the matter of In Re</p> <p>9 Pharmaceutical Average Wholesale Price</p> <p>10 Litigation.</p> <p>11 Today's testimony consists of five</p> <p>12 tapes. The master tapes will be held by</p> <p>13 Henderson Legal Services of Washington, D.C.</p> <p>14 (Exhibit Abbott 165 marked for</p> <p>15 identification.)</p> <p>16 (The deposition was adjourned at</p> <p>17 4:02 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 284</p> <p>1 CERTIFICATION</p> <p>2</p> <p>3</p> <p>4 I, JOMANNA DeROSA, a Certified Shorthand</p> <p>5 Reporter and a Notary Public, do hereby certify</p> <p>6 that the witness whose deposition is hereinbefore</p> <p>7 set forth was duly sworn and that the within</p> <p>8 transcript is a true record of the testimony given</p> <p>9 by such witness.</p> <p>10 I further certify that I am not</p> <p>11 employed to any of the parties to this action by</p> <p>12 blood or marriage and that I am in no way</p> <p>13 interested in the outcome of this matter.</p> <p>14 IN WITNESS WHEREOF, I have hereunto</p> <p>15 set my hand this 9th day of May, 2007.</p> <p>16 JOMANNA DeROSA, CSR</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 283</p> <p>1 SIGNATURE OF WITNESS</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 _____</p> <p>9 BRUCE C. VLADECK, Ph.D.</p> <p>10 Subscribed and sworn to and before me</p> <p>11 this _____ day of _____, 20____.</p> <p>12</p> <p>13</p> <p>14 _____</p> <p>15 Notary Public</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	

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EXHIBIT 88

Zachowski, David J. - Vol. I CONFIDENTIAL
Charlottesville, VA

April 23, 2008

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -x

In Re: PHARMACEUTICAL INDUSTRY :
AVERAGE WHOLESALE PRICE : MDL No. 1456
LITIGATION : Civil Action No.
_____ : 01-12257-PBS

THIS DOCUMENT RELATES TO: :
United States of America, ex rel.:
Ven-a-Care of the Florida :
Keys, Inc. v. Abbott : CONFIDENTIAL
Laboratories, Inc., :
CIVIL ACTION NO. 06-11337-PBS :

- - - - -x April 23, 2008

9:00 a.m.

The Videotaped Deposition of DAVID J. ZACKOWSKI
held at the office of: McGuire Woods, Courts Square
Building 310 Fourth Street, N.E. Suite 300,
Charlottesville, Virginia. Pursuant to notice, before
Tina M. Hepburn, Certified Court Reporter, a Notary
Public in and for the Commonwealth of Virginia.

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Zachowski, David J. - Vol. I CONFIDENTIAL
Charlottesville, VA

April 23, 2008

<p style="text-align: right;">Page 146</p> <p>1 A No. Probably not.</p> <p>2 Q Was the instruction not to</p> <p>3 discuss AWP related only to customers?</p> <p>4 MR. DEMONTE: Objection to the</p> <p>5 form.</p> <p>6 A I don't know who -- I don't know</p> <p>7 what you mean.</p> <p>8 Q Were you allowed to discuss AWP</p> <p>9 with your colleagues?</p> <p>10 A There would be no need to. We</p> <p>11 don't know what -- we didn't know what AWP's were.</p> <p>12 Q Well, you can only speak for</p> <p>13 yourself, right?</p> <p>14 A Yes.</p> <p>15 Q So you don't know, for example,</p> <p>16 what other sales reps may have known or not known</p> <p>17 about AWP?</p> <p>18 A Correct. I don't know if</p> <p>19 anybody knew about AWP.</p> <p>20 Q Included in the instruction not</p> <p>21 to discuss AWP with customers -- well, strike that.</p> <p>22 The instruction not to discuss</p>	<p style="text-align: right;">Page 148</p> <p>1 A Yes.</p> <p>2 Q And national sales meetings?</p> <p>3 A Yes.</p> <p>4 Q And from time to time, did you</p> <p>5 call another sales rep outside of the conference</p> <p>6 call context?</p> <p>7 A From time to time, correct.</p> <p>8 Q When a customer brought up AWP</p> <p>9 to you, were you told how to respond?</p> <p>10 MR. DEMONTE: Objection to the</p> <p>11 form.</p> <p>12 A Yes.</p> <p>13 Q And what were you told?</p> <p>14 A We were told that we do not</p> <p>15 price our products on AWP. We -- we do not -- we</p> <p>16 sell our products based on the length and the breath</p> <p>17 of our injectable portfolio.</p> <p>18 Q And practically speaking, when</p> <p>19 you had customers bring up AWP to you, did that</p> <p>20 satisfy them?</p> <p>21 MR. DEMONTE: Objection to the</p> <p>22 form.</p>
<p style="text-align: right;">Page 147</p> <p>1 AWP related to not discussing with customers; is</p> <p>2 that right?</p> <p>3 A That's correct.</p> <p>4 Q Did anyone ever tell you that</p> <p>5 you were not allowed to discuss AWP within Abbott?</p> <p>6 MR. DEMONTE: Objection to the</p> <p>7 form.</p> <p>8 A I don't know that they</p> <p>9 instructed us to, but we did not.</p> <p>10 Q So your experience is that you</p> <p>11 did not discuss AWP with your colleagues; is that</p> <p>12 correct?</p> <p>13 A That's correct. As you're</p> <p>14 salesmen out there in the field, you're generally</p> <p>15 alone. I mean, you talk on the phone, but there's</p> <p>16 not a whole lot of conversation back and forth.</p> <p>17 Q Well, you had, for example,</p> <p>18 conference calls, right?</p> <p>19 A Yes.</p> <p>20 Q With your district?</p> <p>21 A Yes.</p> <p>22 Q And district meetings?</p>	<p style="text-align: right;">Page 149</p> <p>1 A No.</p> <p>2 Q So we've already talked about</p> <p>3 the first situation; eight or 10 years ago where a</p> <p>4 customer told you that she wasn't going to be able</p> <p>5 to buy Abbott's product any longer because of a</p> <p>6 change to Abbott's AWP; is that right?</p> <p>7 A Yes.</p> <p>8 Q Okay. And then at some point a</p> <p>9 few years later, you testified that another customer</p> <p>10 told you about AWP and the spread; is that correct?</p> <p>11 A Yes.</p> <p>12 Q And in what context did that</p> <p>13 conversation come up?</p> <p>14 A Probably -- again, it probably</p> <p>15 had to do with them purchasing product or -- or how</p> <p>16 the industry worked. I think it was getting</p> <p>17 education on probably how the industry worked, more</p> <p>18 than anything, rather than a specific product.</p> <p>19 Q And did that customer indicate</p> <p>20 to you that some customers made purchasing decisions</p> <p>21 based on AWP?</p> <p>22 MR. DEMONTE: Objection to the</p>

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April 23, 2008

<p style="text-align: right;">Page 366</p> <p>1 language of the protective order and the procedures 2 set forth in that protective order. 3 MR. DEMONTE: I have nothing 4 further. 5 THE VIDEOGRAPHER: The time is 6 4:40 p.m., April 23, 2008. Going off the record. 7 Completing the videotape deposition. 8 9 (Whereupon, signature not having been waived, the 10 deposition concluded.) 11 * * * 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 368</p> <p>1 CERTIFICATE OF NOTARY PUBLIC 2 I, Tina M. Hepburn, the officer before 3 whom the foregoing deposition was taken, do hereby 4 certify that the witness whose testimony appears in 5 the foregoing deposition was duly sworn by me; that 6 the testimony of said witness was taken by me in 7 shorthand and thereafter reduced to computerized 8 transcription under my direction; that said 9 deposition is a true record of the testimony given 10 by said witness; that I am neither counsel for, 11 related to, nor employed by any of the parties to 12 the action in which this deposition was taken; and 13 further, that I am not a relative or employee of any 14 attorney or counsel employed by the parties hereto, 15 nor financially or otherwise interested in the 16 outcome of the action. 17 TINA M. HEPBURN 18 Notary Public for the 19 Commonwealth of Virginia 20 at Large. 21 My Commission Expires: April 30, 2012 22 CCR No.: 0313059</p>
<p style="text-align: right;">Page 367</p> <p>1 ACKNOWLEDGEMENT OF DEPONENT 2 I, DAVID J. ZACKOWSKI, do hereby acknowledge I have 3 read and examined the foregoing pages of testimony, 4 and the same is a true, correct and complete 5 transcription of the testimony given by me, and any 6 changes or corrections, if any, appear in the 7 attached errata sheet signed by me. 8 9 _____ 10 DATE DAVID J. ZACKOWSKI 11 12 13 14 15 16 17 18 19 20 21 22</p>	

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EXHIBIT 89

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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IN RE: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)

MDL NO. 1456

CIVIL ACTION: 1:01-CV-12257-PBS

)
)
THIS DOCUMENT RELATES TO:)

Judge Patti B. Saris

)
)
U.S. ex rel. Ven-A-Care of the Florida)
Keys, Inc. v. Abbott Laboratories, Inc.)
Civil Action No. 06-CV-11337)
_____)

DECLARATION OF MICHAEL W. SELLERS

I, Michael W. Sellers, hereby state that:

1. My name is Michael W. Sellers. I am over the age of twenty-one.
2. I submit this declaration in support of Abbott Laboratories Inc.'s Opposition to the United States' Motion for Summary Judgment in this matter.
3. This declaration is based on my own personal knowledge and my review of voluminous record materials in this case, which materials were detailed previously in my depositions.
4. I began my employment with Abbott Laboratories Inc. ("Abbott") in 1974 and worked for Abbott until 2004.
5. All of my career at Abbott was spent in various positions within Abbott's former Hospital Products Division ("HPD").

6. HPD had two business units that sold the four drugs at issue in this case (the “Subject Drugs”): the Hospital Business Sector (“HBS”) and the Alternate Site Business Sector (“Alternate Site”).

7. From approximately 1990 to 1992, I was the Director of Contract Marketing for HBS. From approximately 1992 to 2000, I was the General Manager of Home Infusion Services, which was a part of Alternate Site. From approximately 2000 to 2004, I was the General Manager of Contract Marketing for all of HPD.

8. I was deposed in the above-referenced matter on March 16 and 31, 2008 as Abbott’s corporate designee relating to a number of topics, including pricing of HPD products and Abbott’s reporting of prices to various third-party pricing compendia.

9. I am informed that the United States has filed a motion for summary judgment in this matter claiming, among other things, that during the time period of 1991 to 2001 (the “relevant time period”), the Average Wholesale Price (“AWP”) published in the compendia was intended to represent an actual average price that wholesalers would charge in the marketplace.

10. Based on my own personal knowledge and the extensive records and transcripts I have reviewed, I am not aware of anyone in HPD, including myself, who understood the compendia AWP and who believed it was supposed to represent an actual average market price.

11. During the relevant time period, although AWP was undefined and there was no uniform understanding within HPD of what it meant, those persons who understood how AWP was set by the compendia for Subject Drugs recognized that AWP was calculated for these drugs as a markup over Abbott’s published undiscounted price, *i.e.*, the highest price available in the marketplace for these products.

12. During the relevant time period, HPD did not report an AWP or "Suggested AWP" to the compendia for the Subject Drugs.

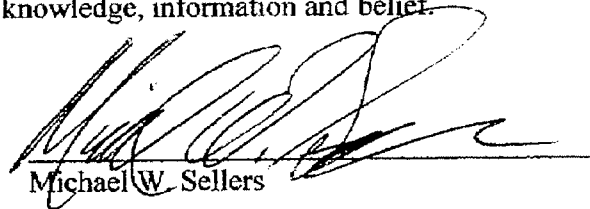
13. At certain points during the relevant time period, HPD reported the published List Price and Wholesale Acquisition Cost for the Subject Drugs to the compendia.

14. HPD reported these prices to the compendia because it believed that was the information being requested.

15. HPD did not understand that it had any obligation to report to the compendia the confidential prices that it negotiated for its products with customers in the marketplace.

16. I declare under penalty of perjury that the information contained in this declaration is true and correct to the best of my knowledge, information and belief.

Dated: August 27, 2009



Michael W. Sellers

EXHIBIT 90

DECLARATION OF JOHN CARMODY

I, John Carmody, declare under penalty of perjury:

1. My name is John Carmody. My current address is 2 Nicholas Ct., White Health, Illinois 61884. I have worked in the home health services industry since 1988. From 1988 to 2004, I was the President of OptionCare of Western Illinois and, later, Cottage Home Options (a franchisee of OptionCare of Western Illinois). During this time, OptionCare of Western Illinois/Cottage Home Options provided home health services to patients in central Illinois and eastern Iowa. Those services included home health nursing and therapy, medical equipment and supplies, and home drug infusion therapy.

2. OptionCare of Western Illinois and Cottage Home Options provided services to citizens of Illinois eligible to receive healthcare benefits under the Illinois Medicaid program. As President of OptionCare of Western Illinois and Cottage Home Options, I became very familiar with how the Illinois Medicaid program reimbursed healthcare companies for providing home infusion drug therapies to Illinois Medicaid beneficiaries. I had several conversations with individuals who worked for the State of Illinois concerning the reimbursement paid to providers of home infusion drug therapies under Illinois's Medicaid program. The reimbursement paid by Illinois Medicaid for home infusion drug therapies was an important consideration in deciding whether providing services to Medicaid patients was financially feasible.

3. I recall having specific conversations with an individual named Ron Gottrich, who I understood worked in a policy position for the State of Illinois and had involvement with Illinois Medicaid's pharmacy benefit program. I do not recall the exact dates or years of those conversations, but believe that they occurred sometime in the mid-1990s.

4. During those conversations, I recall explaining to Mr. Gottrich that there were considerably higher costs associated with preparing and delivering compounded prescriptions in

the homecare setting. Such prescriptions would include the antibiotic drug Vancomycin, as well as the diluents used in compounding Vancomycin and many other drugs that are commonly infused into patients over a course of treatment. As a pharmacist, Mr. Gottrich understood this. He acknowledged that there were considerably higher costs associated with providing injectable and infusion drugs in the homecare setting, and that the dispensing fee paid by Illinois Medicaid (which he acknowledged was designed for retail pill prescriptions) did not come close to covering the costs to dispense home infusion drug therapies.

5. I advised Mr. Gottrich that home infusion providers such as OptionCare of Western Illinois and Cottage Home Options believed that the considerably higher costs associated with dispensing home infusion drug therapies warranted additional reimbursement, such as a per diem payment, from Illinois Medicaid. Mr. Gottrich and I discussed the well-known fact that home infusion pharmacies were able to purchase pharmaceuticals at well below the published AWP pricing often used to set Illinois Medicaid's payment amount for the drugs. I recall Mr. Gottrich indicating that the "split" between AWP and providers' acquisition cost on the drugs served to partially compensate home infusion providers for the extra costs associated with dispensing home infusion drug therapies. I also recall Mr. Gottrich indicating that Illinois was reluctant to pay higher fees for home infusion drug therapies (which represented a small percentage of drug claims paid by Illinois Medicaid) because doing so might set a precedent of increased reimbursement for other drug therapies that required additional services. It was well-understood and agreed that the split between AWP and actual acquisition cost was providing the payment necessary to cover the extra costs of home infusion drug therapy.

6. This was how Illinois Medicaid paid home infusion providers for dispensing home infusion drug therapies to Illinois Medicaid beneficiaries until early 2000. At that time, in

response to an investigation by the United States Department of Justice and the state of New York Attorney General's office, the Illinois Department of Public Aid drastically reduced reimbursement for the "drug component" of several intravenous therapies. To the best of my knowledge, this change was done before providers could provide feedback on the impact of the drastic reimbursement cuts. In response to the drastic reimbursement cuts, I drafted a letter to three Illinois legislators to express my concern over the change in policy. A copy of that letter is attached as Exhibit A to this Declaration. As stated in the letter, the drastic cuts in reimbursement occasioned by the Department of Justice and the New York Attorney General investigation represented a substantial and fundamental change in Illinois Medicaid's policy of reimbursing cost-intensive home infusion drug therapies, and were inconsistent with the understanding between Illinois Medicaid and home infusion providers on paying a fair reimbursement that would allow home infusion providers to both service their clients and cover their costs.

7. Subsequent to this change in policy, I observed that Illinois Medicaid beneficiaries faced challenges obtaining access to home infusion drug therapies. I am aware of several home infusion companies that quit providing services to Medicaid patients because doing so was no longer fiscally feasible. This access difficulty has been somewhat mitigated by the creation of Medicare Part D.

FURTHER AFFIANT SAYETH NAUGHT.



JOHN CARMODY